MT LEGISLATIVE HISTORY

Chapter 325 1973

Bill H _____ S 94 Original bill & hist. ___C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) Feb 22	✓C	Hearing Date(s) ~~Feb 02~~	~~✓C~~
Feb 27	✓C	Feb 06	✓C
_____	___C	Feb 08	✓C
_____	___C	_____	___C
Date Out Feb 27	✓C	_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note: No minutes regarding final Senate Committee action were found

Note: The exhibits discussed in the Feb 08 Senate Committee were not found.

Natural Resources Committees of the Senate and House

Feb 02 ✓C

February 2, 1973

A public hearing on coal was held in the House Chambers starting at 7 P.M. by the Natural Resources Committees of the Senate and House. The joint meeting was co-chaired by Senator Bertsche and Rep. Shelden. Ground rules for the meeting were announced--giving time to the major groups, then to individuals, and finally questions from the committees to any member of the testimonial group.

SENATOR BERTSCHE thanked the group for coming, and for sharing their thoughts on the coal mining issue with the committees. He announced that starting next Tuesday at 10 A.M., and on Thursday and Saturday in the Highway Auditorium the Senate Natural Resources Committee would start hearings on the coal bills.

TED SCHWINDEN, Commissioner of the Department of State Lands, took charge of the first group. He spoke on the need to place the highest priority on getting the best possible legislation on coal. He said these issues would have to be decided on: (1) whether coal mining should or should not be permitted in the state of Montana; (2) if coal is mined, should it be exported or utilized only within the state; (3) the real cost of successful and permanent revegitation must be reflected in the bonding levels; (4) adequately protecting persons in the state from abuses.

GARY WICKS, Director of the Department of Natural Resources and Chairman of the Governor's Coal Task Force, spoke on the widening gap between energy need and energy made. He stated that this year at least 16 million ton will be mined in Montana. He said that the Governor's Coal Task Force has found that the existing laws are not effective and that we have an obligation to the state to set minimum standards.

FLETCHER NEWBY, Director of the Montana Environmental Quality Council, stated that Montana should not accept any risks that would have adverse effects on our environment and people. He stated there should be assurance that the land would be in at least as good a condition after mining as it was before.

THOMAS A. GWYN, manager of Reclamation and Conservation for Knife River Coal Mining Company, was the next speaker. His testimony is attached, exhibit 1.

KEITH COLLINS, an employee of a Bentonite Company, spoke next. His testimony is attached, exhibit 2.

DON ALDRICH, the next speaker, took charge of the next group of speakers and gave a few brief remarks.

CARL WOMBOLT, faculty member at Montana State University, was the next speaker. His written testimony is attached and is exhibit 3.

ARNOLD J. SILVERMAN, professor of Geology at the University of Montana, spoke next and his statement is attached, exhibit 4.

MONS TEIGEN, Montana Stock Grower's Association, was the next speaker and his statement is exhibit 5.

CLYDE JARVIS, President of the Montana's Farmers Union, was the next speaker and his statement is exhibit 6.

JIM MURRY, AFL-CIO, spoke next and his statement is exhibit 7.

REP. SHELDEN chaired the second half of the meeting.

RICHARD REESE announced the coal forum being held at the Junior High School on Saturday and Sunday and invited everyone to attend.

MARY ANN REESE, League of Women Voters, gave the position of the League. Her statement is attached and is exhibit 8.

EVERETT SNORTLAND, Montana Farm Bureau, spoke next and his statement is attached and exhibit 9.

BOB TULLY, Northern Plains Resource Council, was the next speaker and his testimony is exhibit 10.

Dr. ROBERT CURRY, University of Montana, stated there were 12 trillion, 903 billion dollars in strippable coal in Montana--twelve times the entire gross value of present available assets in the state. He felt, therefore, that a great deal of care had better be taken to study reclamation.

JOE CROSSWHITE, representing the Operating Engineers Union in the state of Montana, was the next speaker and his statement is attached, exhibit 11.

RONALD W. ELIASON, International Bentonite Miners and Chemical Company, spoke on bentonite mining next. He stated that bentonite mining is different from coal--both in problems and areas where mined. He felt that legislation now suggested could not be applied to them.

JULIA ANN DUNCAN, University Women, was the next speaker. Her statement is attached and exhibit 12.

FRED BEEMAN, engineer from a chemical corporation, spoke next. His statement is attached, exhibit 13.

DR. ADRIAN JOHNSON, Billings, spoke next. His statement is attached, exhibit 14.

PAT ANTONICH, Sierra Club, urged careful study of a good reclamation law.

DON BAILEY, land owner and rancher, spoke next. His statement is attached, exhibit 15.

J. W. BRADLEY, Petros, Tennessee, spoke next and said there is one thing to do about strip mining and that is to ban it. He said he had worked in mines for years and found that only a few people benefited and many suffered.

DR. SYD GRAFF, Director of Montana's Bureau of Mines and a state geologist, spoke in support of the statements of Joe Crosswhite and Jim Murry and said that he and his staff would attempt to answer any technical questions.

CLAYTON OGLE, Montana Conservation Council, spoke next. His statement is attached, exhibit 16.

MIKE FOSTER, speaking for the sand and gravel industry, spoke next. His statement is exhibit 17.

ED DOBSON, Montana representative of the Friends of the Earth, spoke in favor of abolition of strip mining and phasing out of the present strip mining.

DAVID HUMMEL, business man from Billings, was the next speaker. His statement is attached, exhibit 18.

KENNETH KAIGN, Helena Operating Engineers Union, spoke next: His statement is attached, exhibit 19.

J. K. KUZARA, Musselshell Chamber of Commerce, spoke next. His statement is attached, exhibit 20.

REP. MURPHY said the citizens of this state wanted no desolate wastes. He stated he was co-sponsor of HB 391.

ELLEN WITHERS, Chairman of the Northern Research Council, spoke next. Her statement is exhibit 21.

Dr. C. D. Vermillion and Dr. Hewes D. Agnew sent in their statements as they were unable to attend, exhibits 22 and 23.

Questions were asked by the Natural Resources Committee members of the various people who had given statements.

The meeting adjourned at 9:55 P.M.

Respectfully submitted,

WM. BERTSCHE, SENATE

ARTHUR H. SHELDEN, HOUSE

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Ex. 1

I am Thomas A. Gwynn, Manager of Reclamation and Conservation for Knife River Coal Mining Company and am acting as spokesman for the industry. I have been actively involved in mined land reclamation for a great many years. I would like to preface my remarks by stating that the industry favors specific laws which will result in the complete reclamation of ALL lands mined for coal and all other minerals. All of these companies have already started leveling mined lands and are saving topsoil for replacement on spoils. This is reclamation beyond the requirements of existing reclamation laws, and will (1) return ALL lands to the topography existing prior to mining; (2) stockpile and replace topsoil after leveling; and (3) restore vegetative cover. It is our firm belief that we have already demonstrated an intent to be good stewards over the land we use, returning it to productiveness on completion of mining operations.

The established coal companies in Montana already have a history of involvement in company sponsored, financed, or conducted reclamation programs. Already many acres are being or have been reclaimed for various uses including wildlife habitat and grazing lands. Reclamation conditions are often different in areas mined in Montana as compared to other parts of the country, due to semi-arid conditions, soils and other problems, and answers are being found. But we do not have any acid mine conditions or other problems that have been so troublesome in Appalachia.

My purpose today is to assure you that full reclamation is feasible and is fast becoming a reality in each of the mines, and by reclamation we mean that the mining companies are restoring all

areas mined to approximately the original topography and are then establishing vegetation cover equal to or better than that existing prior to mining. Each mine has its individual characteristics; hence methods, timing, and response cannot be identical. The pictures assembled in the books furnished the committee demonstrate some of the successes we have already experienced.

Under the existing law, some spoils have been capped. The coal companies voluntarily abandoned this "half-way" program in favor of comprehensive leveling. Speaking for these companies, we are re-leveling those spoils previously capped. I have visited each of the active mines in the state and have noted extensive leveling in nearly all cases.

Some of Knife River Coal's reclamation results have been most gratifying. One hundred percent of our disturbed lands are being leveled. The same is true of the operations of Western Energy at Colstrip and Decker Coal Company's operations in the extreme southern part of Big Horn County. At Gascoyne, North Dakota, adjacent to the Montana border, with difficult existing saline soils and low rainfall, we rolled these distrubed lands to the terrain shown in the first picture. This is flatter than the original terrain. It was leveled in August, 1971, and fertilized, deep tilled and seeded that fall. The second picture shows the same area about June, 1972, and the third picture shows the same area in August, 1972 (one year after it was rough mine spoils). True, there are weeds. We are thankful for them because they provide stability and shelter during the first year. But the grasses and legumes are there also, and the area is well on the way to full restoration <u>without</u> replacing any topsoil.

Yes, it can and is being done -- even with difficult soils. All mined lands will be fully reclaimed to useful condition before release by the mining companies.

Some ask how long before the land could be used again. This picture shows spoils at the Savage, Montana mine leveled and seeded in the fall of 1971. This stand was attained in less than one year without topsoil. Immediately adjacent to this on identical mined lands, seeded with similar grasses and legumes, the grasses are now about three years old. The time involved will vary from mine to mine and we must be cautious about demanding instant restoration. It takes time. I was raised on a farm south of Billings and I know some of our reclaimed mine areas have recovered to the point where they could carry cattle. This is the reclamation we are now working to achieve on all mined lands. We have proven it to be possible and we are doing it, contrary to the unfounded or unstudied claims of some individuals and groups.

There is much misunderstanding about the coal reserves in this region. There are not hundreds of billions of tons of strippable coal, as has been believed for so long. The map in the book furnished the committee shows the relatively small area in Montana and western North Dakota having strippable lignite reserves. If the coal is 25 feet thick, one million tons can be produced from 23 acres. Seven million tons were produced in 1971, from an area of land less than that required for construction of 5 miles of interstate highway. And, the area mined will again become productive in a few years, whereas highway use takes lands out of productivity rather permanently.

The cross-section provided the committee shows the evolution of a mine and the progress of reclamation behind mining over a period of

about ten years. With the exception of a slope at the original box cut and final highwall, the area will be level, often more uniform or level than the original surface.

Our companies are not in this hearing taking a position regarding any specific reclamation bills which we have been able to obtain to date. Each of the bills have some meritorious approaches and each of them have certain provisions that are undesirable. Rather than go through a lengthy discussion of each bill, I will give an itemization of several features that we as an industry feel essential in whatever legislation is finally approved and passed:

(1) The final law must be worded clearly and specifically so that there can be no error of interpretation to create continued argument and litigation. Furthermore, it must leave some discretionary power to the administrative agency to deal with varying conditions encountered in different mines.

(2) It is essential that the permit be renewed from year to year after initial approval so long as the operator is in compliance with the law. Mining operations are not established on a year to year basis. A major investment in equipment is necessary and long term contracts must be negotiated to justify opening a mine. The coal burning utility companies in turn make major investments as a result of these contracts.

(3) Past experience has shown that undue hardship will accrue to the operators (and to the public as well) unless applications for permits are processed within a reasonable period of time. We firmly believe that an application should be approved within 60 to 90 days or a reason given for denial. Delay of an application for months and even years is unreasonable.

(4) In placing a prohibition on mining of slopes steeper than a specified degree, this should be an average slope and should not apply to very local slope conditions such as a ravine.

(5) While it is understandable that the Department should satisfy itself, prior to issuance of a permit, that operators will be able to perform as stated, the bonding provisions and threat of being unable to do further business in the state should be adequate protection to the state. A highly competitive industry could not function if the state controlled the method of operation. The mining companies look upon this as a very dangerous provision. While it is apparent from some of the bills that the Department will control methods of operation, as well as procedures of reclamation, with all due respect, we suggest that the Department has neither the skills nor the staff necessary to supervise the operation of a coal mine. Further, we are sure your own observation will tell you that where a method of conducting some operation is officially prescribed, innovation tends to become stifled. So long as the operator is obliged to achieve a certain result, we see no reason why he should not be free to do so by means of his own choosing.

(6) A bond of $5,000 per acre is excessive. The cost of reclamation is only 20 to 25 percent of this amount even with saving and replacing topsoil, and bonding levels should be established by the cost of reclamation rather than be established at some arbitrarily high amount. The only parties which would benefit from the excessive amounts would be the financial institutions in Chicago or New York.

(7) While reclamation should be kept current, it must be recognized that particularly where two seams of coal exist, reclamation can seldom be accomplished before the second year after the coal has been removed. In no event should the operator be required to reclaim the row of spoils immediately adjacent to the strip from which coal is currently being removed as this would create interference between the mining and reclamation procedures and would result in reclaimed areas being further disturbed by subsequent mining, and moreover, it could endanger the lives of men working in the mine.

(8) We believe that multiple seam mining should be performed to the extent that lower seams can be economically mined and marketed. However, this determination should reside with the coal producer and the coal customer. Many coal seams have characteristics such as high sulphur or low BTU that render them unmerchantable or environmentally unacceptable. Also, in some cases the parting material above lower seams is dense inert material that does not lend itself to successful reclamation.

(9) We can readily see the desirability of some flexibility in permitting the department to treat the different conditions found in different areas. Nevertheless, we recommend specific provisions in the law which make it possible for every state employee, citizen and mine operator alike to know what is required and whether the law is being complied with. Rather than forever trying to borrow the language of laws from eastern states where conditions are totally unrelated, we should incorporate the successful provisions of laws from states such

as North Dakota, where comparable conditions exist and where successful reclamation has been demonstrated.

(10) Reports and inspections more often than once each year would serve little purpose. There is only one growing season each year and the reclamation season extends from about April through November. Inspections and reports at the end of the year are adequate.

(11) The permit application fee should be realistic and it should be a "one time" fee. A high fee creates another form of taxation and there are already many tax measures before this legislature. We submit that this bill should accomplish reclamation sufficient to restore the land to its highest potential usage and should not attempt to also be a tax measure.

(12) In controlling highwall slope reduction it must be recognized that little material remains for backfilling the last mine cut at the conclusion of mining operations. A maximum slope of 25° can reasonably be attained by mine operators in reshaping the final highwalls. The final highwalls are a minor part of most operations and a small part of the area disturbed, and a requirement to reduce them below 25 degrees can not only work a hardship but may be generally impossible to achieve in many areas. Furthermore, the flatter the slope required the greater the quantity of coal that will be covered up and left unrecoverable.

We have been challenged to reclaim lands disturbed by mining and we are meeting that challenge.

Ex. 2

My name is Keith Collins. I am employed by a bentonite producer, however, my comments represent my personal views.

The term ranch is a broad term. So is farm merchant, merchant, or manufacturer. A sheep ranch operates under different rules than a cattle ranch. The grocers problems and rules differ from the druggist.

Bentonite mining and marketing problems differ from any other type of mining. Rules written for one type of mining can have disasterous effects on another operation. It follows that a reclamation law should be broad enough to accommodate all mines.

Specific time tables and procedures should be avoided. The law should make ample provision for the operators to participate in the rule making process. The law and the regulatory agency should be oriented to the results that are to be achieved. Methods of achieving the reclamation goal should be left to our American principle of free enterprise. I have no quarrel with reclamation. I have in fact been engaged in this practice for the past 15 years and actively promote good reclamation. I have learned that it cannot be accomplished overnight but must be coordinated with the everyday problems of operating our business.

I respectfully ask that these thoughts be considered by the legislature when reclamation laws are drafted and considered.

Thank you for this opportunity to express my views.

Ex. 3

STATEMENT TO THE MONTANA HOUSE OF REPRESENTATIVES
AND SENATE COMMITTEES ON NATURAL RESOURCES

Mr. Chairman, Senators and Representatives, I am Carl Wambolt, a faculty member at Montana State University. I hold a Ph.D. in Range Ecology. This statement reflects only my personal opinions.

There is a very simple and clearly defined value system attached to minerals, such as coal. Yet, it has to be remembered that such resources are not renewable and are in a finite supply. With this in mind, I find it impossible to justify their extraction from the earth, resulting in disturbances of enormous magnitudes without assurance that other very real values will be restored, at levels equal to the potential inherent to the sites before disturbance. These other values are renewable and therefore are in infinite supply without time limitations.

The agricultural base these lands provide for Montana is of primary importance. Contrary to rumors, the productive potential of most areas to be strip-mined for coal in Eastern Montana is quite high. Ranges that have been maintained in an excellent condition in areas like that near Colstrip will carry one animal unit month of grazing for every 3 surface acres. This rates the area among the most productive in Montana. Grain yields are equally impressive.

The watershed attributes of lands to be mined also have to be recognized for their absolute value. Water is a very basic resource and surface mining does effect its quality and quantity adversely. In a similar manner, wildlife production, a variety of recreational experiences and a high state of aesthetic quality are also depleted by such action.

Consideration has to be given all these renewable resources if the land is to ever again attain its potential for mankind. This brings us to a very delicate compromising point. How are we to define reclamation? Is the State of Montana willing to accept anything less than full consideration for all these values? I think it should not. Although it is a fact that no area will ever be restored to its exact original condition, we can expect no more consideration for these values than we demand.

Recognition has to be given the fact that simply because an area is revegetated, does not necessarily mean that it has been reclaimed to its productive potential. This will be dependent upon a number of factors. First, the requirements of all resource values have to be determined. When this is accomplished, reclamation must satisfy these requirements on a sustaining basis.

Certainly, annual plant species are not adequate for satisfactory reclamation. Annuals are unreliable for production as they are much more dependent upon weather patterns than are perennial plants. In addition, they provide relatively little stability for topsoil because they have minute root systems which cannot stabilize the soil. For this reason they contribute much less to soil organic matter, soil porosity or soil structure than do perennial plants. It would also be a fallacy to compare production of annual plants to that of perennials, because perennials exert "half" their energy to produce extensive root systems. In the same manner annuals should not be used to evaluate potential differences between topsoil, subsoil and raw spoils for plant establishment and production.

Topsoil should be strictly defined and stockpiled for later use as a medium to reestablish a vegetative cover. Many areas to be

strip-mined are bottom-lands which have accumulated a fairly thick A soil horizon, which is the zone of maximum biological activity in the soil profile. On these sites the A horizon should be kept separate from lower horizons with less characteristics suitable for plant growth. After mining, adequate revegetation is more likely with the A horizon respread on the surface above the subsoil and the spoils material.

Under circumstances where the A horizon is so shallow that mechanical stockpiling is impossible, the fertility level of the soils material left for plant establishment will be deficient. With the use of commercial fertilizers, temporary artificial fertility levels can be created. This may be a valuable reclamation tool, however, the reliability and full significance of their effects await further research. Just as crops eventually utilize the fertilizer spread on farmlands, fertilizer used to reclaim land will be depleted and possibly what at first appeared to be satisfactory plant establishment will in fact be dependent upon regular fertilizer applications. This in turn leads to weed problems, especially with annuals such as cheatgrass.

Topsoil is not as fully developed in Eastern Montana with between 10 and 15 inches of annual precipitation as in Appalachia with nearly 50 inches. As a result experiences gained in Appalachia, or even the Dakotas, are in many instances unapplicable to Montana's environmental conditions.

Soil alkalinity and salinity are properties that may pose special problems under some circumstances for revegetation in Montana. The situation may become further complicated as time elapses between mining and reestablishment of vegetation because areas within and adjacent to

mining activity may be inflicted by saline seep problems such as those occurring on thousands of acres under cultivation in Montana today.

Adequate reclamation will have to include extensive earth work, slope sculpturing, and other techniques that may be developed. This will be necessary not only for revegetation but also for unaltered drainage patterns, prevention of mass movements, and general watershed protection.

Natural plant communities are a result of an orderly process whereby they change composition until a certain aggregation of species is in equilibrium with its environment. This grouping of species is therefore the most productive that nature could evolve given the restrictions imposed by climate and other lesser environmental factors. This is why revegetation should include species native to the area before mining.

It is also a basic ecological principle that the more complex a plant community is through species diversity, the more stable and productive it is. Diversity in a plant community also leads to greater wildlife productivity by providing more niches or homes for various animal species. For this reason reclamation must not be considered adequate with the establishment of monocultures or near monocultures. Time will be required to insure that such will not be the case even when great varieties of seeds are planted in mixtures and appear to be establishing. This is especially the situation when exotic species are used because species competition may weed out poor competitors and when livestock and wildlife again exert an influence, their preferences may create undesirable and umproductive monocultures.

All reclamation should be tested under use before it is considered satisfactory to insure its sustaining yield. Perhaps the most valid

approach to such testing is by allowing livestock free choice of reclaimed areas and undisturbed lands as they most surely will have under normal management following mining. New productivity should be compared only to undisturbed excellent condition ranges in the same area and not to ranges that have been overgrazed or otherwise abused. It is further necessary to assure that the plant species established on mined lands are capable of reproducing in their new environment. This will require time, but is essential to insure actual reclamation was obtained.

If wildlife species are to receive the attention they deserve in reclamation plans, then certain basic and specific habitat requirements of each species will have to be met. Vegetation is much more important to wildlife than simply serving as a food supply. It serves as a protective cover for the varied life activities of wild animals, and therefore a diversity of specific plant species are required. An example would be in the fact that plant species in the sagebrush genus (Artemisia) are important for sagegrouse as a cover and food species as well as important for deer and antelope as browse. Without the presence of sagebrush species following reclamation, the previously mentioned wildlife species will suffer and decline.

For wildlife and subsequent recreational considerations reclamation should be required to provide natural balances between vegetative classes of trees, shrubs, forbs and grasses. A natural mosaic of these vegetative classes is also essential. A further benefit derived from these considerations would be to restore aesthetic qualities to the land which in turn would restore a fuller share of the normal dollar value in the real estate market.

Research has been and is being conducted regarding reclamation of strip-mined lands in Eastern Montana. However, it is absolutely necessary

that research be put on a continuing basis to supply possible answers to the many problems that exist. Only time will ultimately furnish us with proof as to the degree of success various reclamation efforts accomplish. For this reason, assurances are needed that reclamation responsibilities are held until success is proven over time.

I sincerely hope that all the resource values and considerations I have mentioned will receive recognition when legislation is acted upon. Again may I say, the key lies in what you are willing to accept as your level of reclamation. Thank you.

Carl L. Wambolt

February 2, 1973

Carl L. Wambolt

Helena, Montana
Feb. 2, 1973

Ex. 4

JOINT SENATE - HOUSE HEARING ON
STRIP-MINE RECLAMATION LEGISLATION

By

Arnold J. Silverman
Professor of Geology
University of Montana

The conditions and regulation of mine land reclamation in Montana has been a slowly growing problem. It is a problem because the cost of mined land reclamation is one of those external diseconomies which must be factored into the cost of production. The citizens of Montana and the Legislature as well, I believe, have learned over the last three sessions that effective mined land reclamation procedures can only be brought about by legislation.

The importance of the problem in the United States is clear. More and more coal and other mineral raw materials are being removed by open pit or strip mining; and, by the year 1975, at least half of all U.S. coal production will be by this method. Each area of coal strip mining produces its own difficult problems in achieving reclamation.

I choose to consider desirable reclamation as the development of a stable and diverse ecosystem, which reflects the native vegetation in the region. Within the northern high plains ecosystem, our knowledge about reclamation procedures to effect such a condition is slim indeed. We have only the beginnings of experimental work and almost no sensitivity studies related to those factors that are most important in achieving reclamation aims. At the same time, the growing affluence, increasing population and use of this land, and the very strong land-man ethic that has always been present in states like Montana, have created pressures which demand effective

reclamation. We live on a fixed land base with fixed environmental resources so that the value of land and surface resources must rapidly increase through time. We must find a way to internalize all of the costs of coal production in order to protect the future.

On the national level, the Commission on National Materials Policy will soon report to the President and the Congress and will recommend that any national materials policy must incorporate the principle that all costs, as well as benefits, of material use should be evaluated before any action related to the extraction, transport, processing, use and disposition of a material is undertaken. In order to evaluate all costs, especially those that are inadequately reflected in market prices, a practice of full disclosure of environmental effects is manditory. Efficiency of material use and protection of the environment will most likely be achieved when costs of environmental impairment are born by those who are responsible for that impairment. And by "costs" I mean the total aggregate, physical and social losses suffered by impairment of the environment, or the resources required to make repairs.

Any reclamation law that hopes to achieve some of the goals that I have outlined above must prescribe certain fundamental requirements. Within those requirements it must allow flexibility to adjust to local problems, and one of the most important points of flexibility is to allow the responsible government agencies to withdraw lands from mining where reclamation expectations, or other factors, mitigate against extraction. Another important part of any bill, in my judgment, should provide for public commentary on mining plans, as those plans are fundamental to successful reclamation. Lastly, an adequate

mine reclamation law must include sufficient bonding requirements that will not only provide the resources for desirable reclamation, but include a contingency reflecting the state of knowledge with respect to the art and science of reclamation. I would recommend a minimum bond of $2,000 per disturbed acre for any given mining plan.

The evaluation of reclamation costs in the northern high plains must include some assumptions about the work to be undertaken. One thing is clear. In few, if any places, do we have an adequate demonstration of reclamation in terms of a stable and diverse native ecosystem. Problems related to the distribution and composition of topsoil, the nature of the soil biome, chemistry of spoil materials, salinity of leach, percolation and capillary waters in the spoils, runoff erosion and stream sedimentation, and the longevity and stability of the planted experimental plots, are areas of little or no basic information. The upper limit of expenditures necessary to achieve reclamation are at this time unknown. We are dealing, however, with more money in terms of the costs of reclamation than the surface market value of the land, and indeed this will continue to be the case in the future.

We can ask how much it will cost for mining companies to perform desirable reclamation on Montana lands and then ask whether these costs will severely tip the economic scale. Let us assume a low of 1700 tons per acre-foot of coal in the eastern Montana coal fields, and a price of coal at mine mouth of about $2.25 a ton. A 50 foot seam of coal will yield approximately 85,000 tons of coal to the acre. We do not have access to the mining company books, but it is my judgment that net earnings before taxes for the coal operating companies in Montana is between 75¢ and $1

per ton. I believe that this is a minimum figure. Therefore, we are looking at 65,000 to 85,000 dollars per acre profit for every acre mined in the eastern Montana fields. Assuming the production of 5 million tons per year for a single mine, a 50-foot seam would mean the disturbance of 60 acres per year (a 25-foot seam a 120 acres per year). Five million tons per year production means a minimum of 4 million dollars a year of net earnings before taxes. Desirable reclamation in eastern Montana may take anywhere from 750 to 2,000 dollars per acre. What does that mean in terms of added costs per ton? In a 60 acre per year disturbed lot, 1¢ a ton added costs would produce enough money to meet what may be the minimum requirements for desirable reclamation. Two cents a ton would provide close to $1,700 an acre or near the upper limits of what desirable reclamation may indeed cost in eastern Montana. On the basis of a $1 a ton of net earning before taxes, the added production cost of one to two cents a ton to achieve the desirable reclamation in eastern Montana does not appear to me to be excessive.

Let me compare this with some of the reclamation costs in the Appalachian areas, particularly in regions of contour mining where back-filling is required. Here the coal mining companies are paying a minimum of 6¢, to an upper limit of 15¢, per ton in reclamation costs. Granted that the coal is of higher value, but a 6 to 15 time larger reclamation cost is not balanced by the two- to three-fold increased value of Appalachian coals. The Appalachian coal miners are able to exist, and exist profitably, while investing 2.5% of the value of the coal in reclamation, while in Montana it might require only 1% or less.

The national need to develop an energy policy has also resulted in recommendations by the Commerce Department to relax environmental standards, so that more coal can be mined and burned. Coal is conceived as the short-term substitute to relax the artificial oil and gas squeeze. Should such a recommendation become policy, it would be imperative for the state of Montana to exert mining and reclamation control for the best trade-off for Montana citizens. In a study, now in final stages, by the National Academy of Sciences, a strong plea will be made for strict environmental standards and reclamation laws to control environmental and social impacts caused by the fuel recovery industries. The study will clearly show that industry can easily afford the minimal costs that this imposes. The future price of all fuels in the United States will trend upward, and so it must be, for the external diseconomies resulting in physical, biological, and social impact caused by the extraction of fuel resources must be factored into the cost accounting. The pressure from energy producing companies to mitigate or produce ambigious language in mine reclamation bills can be expected. The threat of moving resource production from one area to another in order to drive the best economic bargain is now greatly weakened. The geographic trade-offs of five years ago are no longer available. And in my judgment, both the nation and the state needs a strong, fair, and responsible strip mining act.

Thank you

Ex. 5

Statement Before
SENATE NATURAL RESOURCES COMMITTEE
on
Strip Mine Reclamation
Friday, February 2, 1973

Mr. Chairman, members of the committee - I am Mons Teigen, secretary of the Montana Stockgrowers Association. Our organization is composed of some 5,000 cattle ranchers scattered over the length and breadth of our state. The reclamation of strip-mined lands is a matter of great concern to our people due to the fact that many of them own ranches in the coal areas. Furthermore, all of us are taxpayers and hence are vitally interested in the impact of such development on our state's economy.

At this time I will not attempt to make any comparison between the various pieces of legislation which have been introduced thus far in the session, rather I will confine my comments to what our organization believes is necessary to protect our industry and the economy of the state as a whole.

1. You must require that any land mined under this method be reclaimed or else not mined. The resource underlying the surface of Montana is of sufficient value that a couple of thousand dollars spent on reclamation is not out of line. Without reciting the problem in other states, we are all famaliar with the situation left us by the dredge operators and placer miners of the 1800's and the devastated mountain valleys that were with us for years to come. This must not be allowed to occur in the development of Montana's coal resource.

2. The legislation should provide authority for the state to determine what areas may or may not be mined due to historic, anthropological, or cultural reasons. Authority should also be provided banning the mining of areas which would be impossible to

3. A substantial bond should be required of each strip mine operator. In our opinion, a minimum of $1,000 per acre would seem proper, however, I am sure there will be proposals for more than that.

4. A definition as to what reclamation actually is should be clearly stated and we submit that merely reclaiming to some type of vegetative cover is not sufficient. The vegetation should be of such a type that it can eventually maintain itself under the climatic and topographic conditions of the region. I visualize that it will take several years to develop a permanent stand of vegetation as plant communities do not develop over night and it should be the responsibility of the mine operator to continue his effort until this is done.

5. Authority of the Administrator should be outlined in a clear-cut manner in order that there be no question as to his responsibility or authority in administering the law.

6. The rights of surface owners must be protected to the extent that they are on an equal basis with the mining company.

In closing we would suggest that the State Land Department continue to be the agency administering the Act for in the short period they have held this responsibility have proved themselves as having the competency to proceed.

# # # # #

Ex. 6

MONTANA STATE SENATE & HOUSE OF REPRESENTATIVES

Natural Resources Committees

Joint Hearing -- Senate Bills 94, 108, 145 & 252

Friday, February 2, 1973

Testimony by

Clyde Jarvis, President
MONTANA FARMERS UNION
750 6th St. S.W., Great Falls, Montana

I am Clyde Jarvis, president of the Montana Farmers Union, a statewide family farm and ranch organization of approximately 8,000 members, with headquarters in Great Falls.

The members of our organization and others in agriculture who till the soil and tend the stock long have advocated the wisest use of our natural resources, with special emphasis on soil and water conservation and land utilization.

These are people whose lives and livelihoods give them a deep and abiding concern with what happens to our land, our water, our air, our animals and our plants.

There is no such concern with those profit-only motivated energy combines who sit in pavement surrounded steel and concrete enclaves amidst the already despoiled environment of the metropolitan areas, or even those who peer from office windows into the depths of the Berkeley Pit.

They have disproved any right to act as stewards of any portion of such land and air and water as we have in this vast country of Montana.

Their past record of non-performance here and elsewhere in the United States should be weighed heavily in the deliberations of this Legislature.

That is why the Montana Farmers Union in its recent annual convention resolved to seek a moratorium on strip-mining until federal and state legislation is enacted to regulate such operations and provi for adequate reclamation.

The diversity of opinion and proposed legislation, both in the federal Congress and in this state Legislature, are convincing evidenc that we are ill-prepared for any such enactment at this time.

Our Governor has said, ". . . you must enact and I must sign into law the strongest strip mining control regulations in the history

of this country," We applaud the Governor for that stand.

But I remind you of the House and Senate and the Governor as well that in 1966 the Kentucky Legislature, also responding to a rising wave of public concern, passed a strip mine bill hailed as the strongest in the nation at <u>that</u> time. The following year strip mine acreage in Kentucky doubled and the trend continues there and in other states.

A moratorium is a must. If we act now in haste, we shall continue our long history of colonial subservience to exploiters and in a few short years we will have more than land to reclaim -- we will have an economy and a rural society to rebuild.

There is no energy crisis, there is only energy waste through usage which approaches gluttony. The real crisis is with the environment and with people, it is with the decision to be made as to the proper handling of our resources.

The coal has been there for thousands upon thousands of years and its potential has been known for many years -- it will not spoil, it will still be there, safe in the ground, while you take the time to make the right decisions.

That's why a moratorium is a must.

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Ex. 7

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601

405 NORTH LAST CHANCE GULCH

STATEMENT BY JAMES W. MURRY, EXECUTIVE SECRETARY OF THE MONTANA STATE AFL-CIO BEFORE THE JOINT HEARING OF THE SENATE AND HOUSE NATURAL RESOURCES COMMITTEES, FRIDAY, FEBRUARY 2, 1973 IN SUPPORT OF COAL STRIP-MINING LEGISLATION WHICH WILL PROTECT OUR ENVIRONMENT THEREBY PERMITTING THE UNINTERRUPTED DEVELOPMENT OF THAT RESOURCE.

CHAIRMAN BERTSCHE AND SHELDEN, MEMBERS OF THE COMMITTEE:

MY NAME IS JIM MURRY AND I APPEAR BEFORE YOU AS A REPRESENTATIVE OF THE MONTANA STATE AFL-CIO IN SUPPORT OF COAL STRIP-MINING LEGISLATION WHICH WILL PROTECT OUR ENVIRONMENT THEREBY PERMITTING THE UNINTERRUPTED DEVELOPMENT OF THAT RESOURCE.

THE MATTER OF A QUALITY ENVIRONMENT IS, IN OUR OPINION, FOUR DIMENSIONAL.

IT IS THE PRESERVATION OF PURE AIR.

IT IS MAINTAINING A WATER QUALITY THAT IS FIT FOR HUMAN CONSUMPTION AND THE MAINTENANCE OF ACQUATIC LIFE.

IT IS TO THE LARGEST DEGREE POSSIBLE, AN UNSULLIED LANDSCAPE,

WHETHER MOUNTAIN VALLEY OR ROLLING PLANE....AND...

IT IS WELL PAID WORKERS AND HAPPY FAMILIES.

FOR EXAMPLE, TO THE UPWARDS OF 30,000 UNEMPLOYED MONTANA WORKERS THE MOST IMMEDIATE ENVIRONMENTAL PROBLEM THEY FACE IS FINDING A JOB. YES...A JOB THAT WILL PUT FOOD ON THE TABLE, PAY THE RENT, BUY CLOTHES FOR THE KIDS, PAY MEDICAL BILLS....

DO THESE VALUES CONFLICT? ARE THEY TOO UTOPIAN?

WE THINK NOT.

WE SINCERELY BELIEVE THAT THROUGH WISE, FARSIGHTED PLANNING, WE CAN HAVE ALL OF THEM. ---

WE HAVE NO TIME FOR THOSE FEW WHO WOULD MAKE MONTANA INTO A HUGE COUNTRY CLUB ESTATE.---

LIKEWISE, WE ARE AS EQUALLY OPPOSED TO THOSE WHO ARE INTERESTED ONLY IN SHORT TERM GAIN; WHO, LIKE LOUIS THE XIV OF FRANCE, EMBRACE THE

PHILOSOPHY OF "AFTER ME, THE DELUGE!"

THERE IS A MIDDLE GROUND. AND ON IT WE FIRMLY STAND.

WE HAVE A LONG-STANDING POLICY POSITION FROM OUR DELEGATE CONVENTIONS WHICH STATES IN PART THAT WE "URGE OUR LEGISLATURE TO PASS NECESSARY LAWS TO REGULATE NEW INDUSTRY AND BRING ESTABLISHED INDUSTRY INTO A CONDITION THAT WILL GIVE MAXIMUM EMPLOYMENT WITH AN ABSOLUTE MINIMUM OF HARM TO OUR ENVIRONMENT."

WE ALSO HAVE AN EXECUTIVE BOARD MANDATE OF LAST DECEMBER 18 DEALING SPECIFICALLY WITH COAL STRIP-MINING, WHICH STATES:

"WE REQUEST THE HIGHEST PRIORITY BE GIVEN TO THE IMMEDIATE DRAFTING OF 'GROUND RULES' GOVERNING THE RESTORATION OF COAL STRIP-MINED LANDS AND THE PRESERVATION OF PRESENT AIR AND WATER QUALITIES, THEREBY PERMITTING THE UNINTERRUPTED DEVELOPMENT OF THE COAL RESOURCE. THIS POSITIVE STEP

WE BELIEVE TO BE THE ONLY ALTERNATIVE TO THE DEMAND FOR A MORATORIUM, OR LEGAL ACTION TO ENJOIN FURTHER EXTRACTION UNTIL STRICT ENVIRONMENTAL SAFEGUARDS ARE ENACTED AND ENFORCED."

THERE ARE SEVERAL BILLS BEFORE YOU WHICH WE UNDERSTAND WILL SUBSTANTIALLY MEET THE ENVIRONMENTAL PROBLEMS LISTED ABOVE. WE ARE CERTAIN THAT FROM THESE THE LEGISLATURE WILL DRAFT A LAW THAT WILL BOTH PROTECT THE ENVIRONMENT OF EASTERN MONTANA AND FOSTER THE JOB-CREATING UNINTERRUPTED DEVELOPMENT OF THE COAL RESOURCE.

THANK YOU.

LEAGUE OF WOMEN VOTERS OF MONTANA

Mr. Chairman, Members of the Committee.

I am Mary Lee Reese and I am presenting testimony tonight for the League of Women Voters of Montana. The League is a non-partisan organization open to all women of voting age and has as one of its principles the active and informed participation of citizens in government. We study current public issues and our positions represent a consensus of the general membership.

The League position on coal development states that strip mining on lands which cannot be returned to their original or a higher use should be prohibited. Where reclamation is possible, strip mining operations and the reclamation process must be strictly regulated.

At the present time the state of Montana has no authority over the type of mining operations and has minimal control of reclamation. It has no authority to deny the right to mine in order to protect lands which are unsuitable for strip ~~in~~ mining. Selective denial of permits and the authority to control the method of mining in steep areas should be integral parts of mining legislation.

The responsibility to demonstrate that there can be satisfactory land reclamation should rest with those companies and individuals exploiting our natural resources. Strip mining disturbs the natural balance of an area in the removal of topsoil and vegetation, the displacement of wildlife, the disruption of productive uses such as grazing and farming, destruction of aesthetic values and the contamination of water. Previous Montana laws have not required self-perpetuating vegetative cover under long-term climatic conditions. We need this requirement to prevent erosion and for the support of domestic livestock and wildlife. Any legislation should provide specific reclamation provisions including the salvage and reuse of topsoil, recontouring of spoil banks and highwalls to the approximate natural contour of the land; and retention and treatment of any water

which may be adversely affected by the operation. Legislation should seek the return of strip mined land to a productive use in the shortest time possible.

Attendant with any proper reclamation plan must be strict provisions protecting the ground and surface water. The use of ground or surface water by strip mining companies in actual mining or by attendant industrialization must hot degrade water quality in a way that others cannot use and enjoy it, whether for agricultural and municipal use, recreational and aesthetic values, or any other purpose. Consideration must be given to the effects of excavation and spoil banks in raising and lowering the water table and to the ability of spoils to retain enough water to support vegetation. Contaminants such as sulfur, fluorides, mercury and trace elements should not be allowed to drain into either surface or ground ~~xxxx~~ waters. Depletion of water from ground or surface sources in a way that harms others should be prevented.

Strip mining may be expedient and inexpensive in terms of costs to producers under economics that don't fully consider costs to society and costs to the environment. But when such costs are included, deep mining may be a reasonable and economically feasible alternative.

According to the Environmental Policy Center in Washington D.C., the costs of switching from strip mining to deep-mining of low sulphur coal are not prohibitive, and are considerably less than has been suggested by the National Coal Association. Increased costs resulting from a switch to deep-mined coal is really only the imposition of the costs of mining on the consumer and taxpayer instead of on the land and people of those states and regions in which strip-mining has been pursued. Environmental and social costs to Montanans must be weighed against the extra 50cents to $1 which consumers in Montana and elsewhere would have to pay each year for electrip power produced

by burning deep-mined coal as compared to strip mined coal. Why should Montanans subsidize cheap power for St. Louis and Seattle?

The League believes that pollution control and reclamation must be considered a cost of doing business. As citizens, taxpayers, and consumers, we must expect the costs to be passed on to us, and, emphatically, also to consumers elsewhere. Montanans should not allow themselves to bear the costs that Appalachia has--these costs must be shared by the producing companies, by their stockholders both outside as well as inside Montana, and by all of those who will eventually consume our non-renewable coal resources.

8x9

NAME Everett Snortland BILL NO. ____

ADDRESS 1906 N. Harris DATE ____

Helena, Montana

WHOM DO YOU REPRESENT? Montana Farm Bureau

SUPPORT? X OPPOSE? ____ AMEND? ____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

We, of the Montana Farm Bureau, recommend that the restoration of mined areas be accomplished in such a manner as to restore the full agricultural potential. By this, we want to insure that the disturbed soil will be returned to the condition that will support permanent plant growth.

TESTIMONY BY ROBERT R. TULLY, ROUNDUP, MONTANA Ex 10

REPRESENTING: NORTHERN PLAINS RESOURCE COUNCIL

RECOMMENDATIONS IN RE: RECLAMATION OF STRIP MINED LANDS

Mr. Chairmen; Committee Members:

Montanans, and more specifically, you legislators, are on the threshold of a new day, as it were, with regard to the strip mining of coal and with reference to those legislative provisions that affect this industry. It is perfectly fitting and proper that State Government should exert control and regulation over this activity, as in many instances the resources are in public ownership or made available to industry as a public use.

The urgent need for stringent, specific, enforced reclamation requirements is glaringly apparent in any of the 26 states where this type of exploitation has occurred. It is a sad fact that without compulsory statute provision the strip mining industry has simply not delivered effective commercial quality reclamation in many areas of the United States. Public relations "showplace" projects, or promising experimental plots to the contrary, there is today in Montana no satisfactory reclamation being achieved under law nor any assurance that there will be. Indeed, were it not for the shameful, sorry track record of the strip coal mining industry countrywide, we might not need be here today.

Those of you who were instrumental in the passage of reclamation legislation in the recent past should be commended. You were farsighted indeed to be alert to the dangers to the state before the words ecology and environment came into common use. That your early efforts must now be strenthened and broadened is quite apparent to all.

I would hope the following suggested provisions receive your careful consideration, and be awarded your "do pass" recommendation.

1. Strip mining should be allowed as a "one time only" activity under the law. Land once strip mined and reclaimed should be inviolate to such future activity. This concept in no way can be regarded as a denial of subsurface or mineral rights, but would encourage extraction of the most resource with the least surface damage.

2. Public notice of mining proposal before permit approval.

3. Public hearings shall be provided for upon complaint of affected parties.

4. Reclamation defined as restoration of surface to premining use, productivity level, and value.

5. Strip mining permit application to include written permission of surface owner.

6. Selective denial authority vested in the administering agency.

7. Annual permit review authority including power to revoke permit.

8. Bonding requirements substantially increased ($2000-5000/acre)

9. Absolute authority over control of mining method and reclamation techniques used.

   a. No contour mining permitted.
   b. All topsoil to be stockpiled.
   c. Overburden returned to pit in reverse order of excavation.
   d. No final cut or pit with highwall to be permitted to be left unfilled and ungraded.
   e. All slopes to be traversable by wheeled farm implements
   f. Use of organic rather than chemical fertilizer to be encouraged.
   g. All affected or adjacent areas safeguarded from erosion and siltation damage.
   h. Provision for water table protection included.

In closing, I would like to quote Dr. Harold Malde of the U.S. Geological Survey in Denver, acknowledged one of the world's leading authorities on strip mined land reclamation. Dr. Malde, speaking last fall in Buffalo, Wyoming, about the prospects for high plains area of eastern Montana and northern Wyoming, said, "At this moment I doubt that anyone can say with confidence that practical reclamation can be done in this area."

You are all familiar with the tragedy of Appalachia and what brought it about. Many say "it can't happen here", but there are many more who are desperately afraid that without decisive legislation now, it will happen here.

Ex 11

SUPPORT OF SENATE BILL NO. 94

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

My name is Joe Crosswhite, and I reside at Columbia Falls, Montana; and I am here representing approximately 5,000 Operating Engineers in the State of Montana and we are in support of Senate Bill #94.

Before I go any further, I want to set the record straight, that we, the Operating Engineers, are as much concerned with the ecology and environmental problems as anyone else in the State of Montana; and we believe that in any strip-mining of coal, the land should be reclaimed and restored to as good a condition, or better, than it was originally.

The majority of Operating Engineers in Montana consist of the heavy-equipment operators who operate, service and maintain, cranes, shovels, bulldozers, scrapers and all large earth-moving equipment. So you can see that we are vitally interested in the strip-mining of coal. Because, in the strip-mining of coal, from the first layer of dirt removed to the last layer of coal, and until it is processed and loaded into railroad gondolas, it is our equipment and our operators that are employed in the complete process. Further, the reclaiming of the land will be accomplished by the same earth-moving equipment and the same operating engineers who mine the coal.

We have heard statements pro-and-con on strip-mining by interested parties and we have come to the conclusion that most of the prophesies and statistics produced by some groups have been inflated out of proportion. For example, the thousands and thousands of people that will migrate into Eastern Montana from all over the United States and of the thousands and thousands of acres that would be destroyed yearly. These, and other statements like them, will not bear out in actual development of the industry. I am going to speak here just on basics, looking at it from the working man's standpoint.

First, I want to say that the employers in the strip-mining industry are not all large coal companies or private-utility companies as some would have us believe. Some mining employers are the same contractors that we have held labor agreements with in the State of Montana for a good, many years.

These heavy construction contractors have contracted from the coal companies and private-utilities to do the entire processing of strip-mining coal and the reclamation of the land. These contractors are the same contractors that have built our highways in Montana for many years under the Operating Engineers' Labor Agreements.

These labor agreements have hiring clauses that say employees hired by these contractors must come from the unemployed lists maintained in our local union hiring offices throughout the state. Therefore, any thoughts that may have been generated by opponents that there will be a large influx of out-of-state workers, are just myths.

In comparing the strip-mining of coal with other work that has been done in Montana by these contractors, there is a vast difference, and it is all advantageous to the welfare and economy of both the State of Montana and the workers involved. Most construction jobs are more-or-less slowed down or completely halted during the long winter months that we are accustomed to in the State of Montana. Whereas, these same contractors engaged in strip-mining will have untold numbers of years of steady work--not haunted by such problems as the weather elements, federal funds being withheld and the many untold problems relating to construction.

The strip-mines are not faced with methane gas, fires, cave-ins or black lung and all other problems associated with underground coal miners. We want the committee to consider the health and hazard comparisons between strip-mining and underground mining of coal.

With a well-regulated industry, such as Senate Bill #94 provides, the working force in Coal-Mining Areas will be

working on steady, year-a-round jobs, that pay them well, and they will not be standing in line at the Employment Service Office, waiting for unemployment benefits, or becoming another welfare recipient of the county or state, nor will he be forced to run from town-to-town seeking jobs that do not exist - but will be working and contributing weekly, monthly and yearly; pumping good, American, payroll dollars into the economy of this state.

We as Operating Engineers want to and we also want the Committee to take a good realistic look at the strip-mining industry. We don't believe as working people involved in strip-mining that large companies, private utilities or contractors should be allowed to do as they please as have big companies and corporations in previous years been allowed to exploit both the ecology and people of this state. We also do not believe, that regulations and laws should be so strict as to suppress this industry as some interests would like to see it. We believe, that if all interested parties here today would be realistic and support Senate Bill #94 Montana can enjoy the most "vigorous boost" as far as the economy in this state has had for a good many years. Senate Bill #94 provides steady uninterruped employment for several hundred good Montana citizens for years and years to come.

In closing, we are opposed to any kind of moratorium that would suppress this industry. Another consideration the Committee should give is that if a good, reasonable, well-regulated law does not come out of this Legislature, then, I believe the Federal Government will intervene and will assume the authority of regulating the industry and it will be taken out of our hands completely.

We respectfully request that the Committee give a "do pass" recommendation to Senate Bill #94.

I Thank You.

Ex 12

I am Julianne Duncan, representing the 1200 members of the Montana Division of the American Association of University Women.

AAUW strongly supports reclamation that would return the land to its former use. We realize that the costs of mining and restoring the land will be passed on to the consumer, yet it is past time that we were made aware that our so-called bargain in "clean heating" is made possible because of the devastated land and people left behind when the coal companies move on.

We as consumers are willing to pay the increased costs to prevent this exploitation of land and people. At the same time, we must search out ways to conserve the amount of power we are currently using.

According to David Freeman, a Ford Foundation researcher and director of the Ford Foundation energy policy project (Billings Gazette, Jan. 26, 1973), "The nation can keep warm, get to work and keep industry humming with about one half less energy than is presently consumed."

Yet utility companies are threatening us with blackouts and brownouts if we do not allow them to exploit the vast coal reserves of eastern Montana. Is it not possible that our tax structure encourages investing in new plants to maximize corporate profits rather than initiating programs to trim energy consumption and increasing research into additional sources.

~~While~~ we are reluctant to infringe on the right of utilities to advertise, we cannot help but question their public interest in placing such a low priority on research in contrast to the funds expended for advertising, particularly when ~~such~~ advertising focuses on items of ~~such~~ superfluous need.

Industrial exploitation of resources may mean wealth but it is not progress. Every ton of coal removed today for fuel means one less ton in the future when our needs may be much more crucial than they are today.

Ex. 13

My name is Fred Beeman, Area Minerals Engineer, International Minerals & Chemical Corporation.

IMC operates bentonite mines in Carter County.

Bentonite mining is different than other types of surface mining and entails problems that are unique to our industry.

Our yearly disturbance will be approximately the area required to support one cow for one year. We must take the approach that the production of disturbed lands is being temporarily diverted to mining production.

Total removal of mineral will average 30" of thickness with overburden of 18 feet average thickness.

TESTIMONY OF ADRIAN JOHNSON, M.D. BILLINGS, MONTANA

Ex. 14

I have come to Helena tonight to offer testimony before this Committee because of my deep concern regarding the adverse consequences of strip mining in Montana unless strict, comprehensive and enforcable legislation is passed to regulate this mining. I would like to say at the outset that I speak not only for myself but for a large number of physicians in Yellowstone County who have expressed similar concern to me.

Most of us had opportunities to live in other geographic areas where incomes are higher and the so called advantages of larger population centers more readily available. The decision to sink our roots in Montana was an easy one, and the reasons for this choice clear in our minds; namely, the clean air, clear water, beautiful land and the way of life which are in sharp contrast to urban and industrialized areas.

Because of our love of Montana and our knowledge of the devastated landscapes, dead streams and desolate peoples left in the wake of strip mining in other areas, we view with alarm strip mining under the present laws of this State.

You, our elected Legislators, have the difficult task of writing legislation to protect Montana's future against the same kind of exploitation.

As you well know, there will be tremendous pressures placed on you to compromise the land to the advantage of the coal and power companies. The issue is too vital for compromise.

1. It is imperative that no new strip mining permits be issued until complete and comprehensive environmental impact studies have been done.

2. No permits should be issued until reclamation of the land has been proved feasable. (A recent study by the Dept. of Interior reveals that no effective revegetation measures have yet been developed for arid or semi-arid areas) The land should be restored to equal or better than pre-mining productivity.

3. Once it has been established that reclamation is possible, the accomplishment of this reclamation needs to be guaranteed by the posting of bonds equal to the cost of reclaiming each acre mined.

4. Permits should be renewable yearly and only after review of the previous year's performance.

5. Permits should be revolked for violations of the conditions of said permit.

6. It should be recognized that in some areas permits must be denied because of the impossibility of reclamation or because of historic, archeological and recreational considerations.

7. The right of condemnation which allows a company the right to mine coal against the will of the surface owner is basically wrong and should be corrected.

As I stated before, there will be many pressures and attempted persuasions to get you to compromise. Do not rely on promises of public spiritedness of professed reform on the part of coal companies. Past experience in other areas is stark evidence this cannot be depended upon. The owners of these companies, in most cases, do not live in Montana, and have only one interest here -- the mining of Montana coal. They will do nothing to reclaim the land that you do not require them to do. It is our plea that you let no permits be issued until strict, enforcable laws are on the books to protect Montana and Montanans from a fate similar to Applachia.

Ex. 14

NAME ADRIAN JOHNSON BILL NO. _____

ADDRESS 3332 ROCKWOOD CIRCLE DATE 2/2/73

BILLINGS, MONTANA

WHOM DO YOU REPRESENT? The Public Sector

SUPPORT? _____ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

I am Don Bailey a rancher and land owner from the Colstrip area. The pros and cons of coal development have been thoroughly discussed and analyzed across the state of Montana. Some opinions are sternly voiced in favor and others are blatantly opposed. Unfortunately, this strong division of public opinion may back-fire on both elements. Industry is able to play both opinionated sides against a complacent, relatively uninformed middle. This situation makes me mindful of the famous quote, "United we stand and divided we fall". Developing companies will utilize this predicament to its utmost in an attempt to snarl the emergence of a guiding hand from the State of Montana, because any regulations imposed can only lower the stock dividends that they will declare to their stockholders.

In the face of a purported energy crisis, utility and energy producing companies are black-mailing and deceiving Montanas into believing that coal development is inevitable and can proceed on industries terms with the most conscientious consideration for Montana and its people.

Advertising has suggested that no problems are evident in the reclamation of strip-mined land. Power plants can be built adhering to all current regulations and there will be no polluting effects. An area can become populated and industrialized with nothing but good effects on the economy and sociology of that area.

I must take exception to everyone of these allegations. There is really little proof available in this state that large scale reclamation, under normal circumstances, can be accomplished. There are some test plots and experimental projects in existence that are being used for public relations and public persuasion purposes. The realistic, large acreage attempts have been anything but successful. Conscientious attemps must be recognized, but the results are far from impressive. There are even some serious unanswered problems emerging from the test plots which deserve consideration.

Because coal conversion systems will be constructed to comply with present air quality standards, may suggest that there will be no pollution. Chemists who are doing research in the Colstrip area have informed me that the two power plants being constructed at Colstrip may impose very adverse, long-range environmental consequences on those of us exposed to their emissions. Additional conversion systems in the immediate area will only intensify and accelerate these consequences. This will be in spite of the incorporation of modern pollution control equipment into these complexes. The effectiveness of venturi scrubbers is very questionable. We have indications here in Montana that they will not work. Effects of a 99.5% efficient system, nearly identical to this in the 4 corners areaof New Mexico, has only been a severely degraded environment. These comments can all be substantiated.

Future economic and social effects are difficult to determine at this time. However, if we look to other areas where this type of development has proceeded, we can find much to be concerned about. The Chamber of Commerce philosophy that industry can bring only jobs, large payrolls, and sound economic growth, if properly controlled, is only a myth in Montana at this time. I only hope that those of us who are standing with outstretch palms, waiting for greenbacks to inundate them, have some answers to ensuing problems or are willing to assume some responsibility for the sacrifice of our environment and envied way of life in Montana. To date they have

chosen to ignore the possible long range adverse effects, in favor of short term gains, hoping they will eventually just go away.

If these proponents of coal development have any inclinations other than personal greed, they have not exhibited it. Because they are in favor of coal development with proper controls, does not relieve them of the responsibility of seeing that we have proper controls. I have yet to see one public organization or Chamber of Commerce,who has officially endorsed coal development, come out in favor of any of the proposed legislation to control it.

It appears to me that there are three areas of concern to this legislature: (1) reclamation of strip mined land; (2) control of conversion facilities; and (3) beneficial economic input to county and state government from a realistic coal tax.

In view of the voting trends of the last election, and concern shown, I think this legislature has a mandate from the people of Montana to meet these problems head-on.

I don't believe a compromise or watered down version of any proposed legislation will satisfy these urgent needs. If Montana is to control coal development, this legislature must begin the task by handing the admistrative state agencies the tools to do it with.

The hour is later than most people realize. The next legislative session may be too late. Is Montana going to regulate coal development or is coal development going to regulate Montana?

Presented by Ello
Clayton Ogle
Montana Conservation Council

Statement to the Joint Senate-House Natural Resource Committee on Surface Mine Reclamation. Feb 2 1973.

The Montana Conservation Council, a nonprofit, nonpartisan citizens organization dedicated to using and developing Montana's Resources to provide for peoples needs while protecting environmental and esthetic values, support the following principles for surface mine land reclamation legislation.

Montana Coal Council
Surface Mine Reclamation
Principles

Bonding

The amount of bonding shall be determined by and be equal to the estimated cost of the total reclamation plan as described in the finally approved permit authorization and subsequent permit renewal authorizations based on annual reviews. The minimum bond for a particular contract or permit area shall not be less than $5,000.

Permit

The initial permit for operation shall be based on the acceptance of the full documentation called for in a permit application as set forth in the law. Annual renewal of the permit shall be based on satisfactory compliance with the Act and shall be automatic unless non-compliance is shown.

There shall be annual review of the operation and opportunity for revision of the plan as new data and information become available. For this review and renewal system to work satisfactorily, the administering agency must be adequately staffed.

Selective Denial

The MCC supports the concept of selective denial of permit, with adequate public hearings and appeal procedures as applicable in the existing Administrative Procedures Act. The MCC specifically concurs in the denial of a permit for a contour mining operation which will leave a bench, given the present levels of need, present availability of coal that can be area mined, and present reclamation knowledge and abilities.

Definition of What Constitutes Reclaimed Land

The MCC defines reclamation in the following manner:

As soon as is reasonably possible after backfilling, grading, and topsoiling, the surface of the affected land shall be revegetated with a self-perpetuating, diverse plant community so that the site at the end of a minimum of 6 years:

(1) -- is capable of feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(2) -- is capable of regenerating itself under the natural conditions prevailing at the site, including conditions of occasional drought, heavy snows, and strong winds;

(3) -- and is capable of preventing wind or water soil erosion at least to the extent achieved prior to the operation.

Ex 17

TO: JOINT SENATE, HOUSE NATURAL RESOURCE COMMITTEE.

HONORABLE COMMITTEE;

I am Milan Foster, representing myself, from Great Falls, Montana. I would like to point out the following facts concerning the Sand, and Gravel Industry in Montana.

1- Reclamation for this industry is covered by the " THE MONTANA OPEN CUT OR STRIP MINED RECLAMATION ACT " signed into law on March 9, 1971 by Governor Forrest Anderson.

2- This Act provides that a producer enter into a contract with the State Board Of Land Commissioners, pay a fee of $50.00, post a minimum bond of $200.00 per disturbed acre, present a plan of operation and proposed manner and method of reclamation.

3- This law is administered by The Department of State Lands and Investments. Ted Schwinden, Commissioner.

4- The Sand and Gravel Industry is basically composed of small local operators, operating in every community in Montana. Gravel is a commodity that cannot be transported great distances. Thus, this is a basic, local, industry that provides a product necessary for all types of construction.

5- Most sand and gravel operations have practiced reclamation for years. We now have an effective law enforcing reclamation, and this law is working due to the able administration of The Department of Lands and Investments, and the cooperation of individual operators and various associations.

6- I respectfully submit that further punitive and costly reclamation legislation against the sand and gravel industry will eliminate many small marginal operators, increase the costs of construction to all the people of Montana, and only the people of Montana.

7- I therefore request that this committee delete any reference to " Sand and Gravel " in pending legislation, and give the existing law an opportunity to work, and it is working.

Resectfully,

Milan Foster

Milan Foster.

Ex 18

Mr. Chairman, Members of the Committees and concerned citizens. I am David Hummel from Billings. I have testimony to present which relates to the four bills. Copies have been made available to the Committee Members.

I could testify in anyone of three of your categories. I am a businessman. As a member of the Sierra Club, I am a conservationist. I am concerned with Montana's environment and development as a member of the general public.

In the short time available, I would like to address myself to a specific problem I have as a highway contractor and sand and gravel operator. During the last two years I have been living with the Montana Open Cut or Strip Mined Reclamation Act, Chapter 224, Session Law of 1971. I have been dealing with the Department of State Lands who I believe has done an admirable job with limited staff in administering the law.

The paperwork and lengthly procedure involved in administering gravel pit reclamation contracts has kept the Land Office from the more extensive problems of the coal mines.

Gravel pits are normally used for public works projects, State, City, County and Federal. These projects require a 100% performance bond on the work. Specifications require reclamation, thus, reinforcing State Law provisions. Reclamation must be done before final payment is made and a claim would be made on our bond for whatever amount is necessary if this work

is not done. Consequently, some of the requirements of the present law are superfluous in accomplishing the restoration of gravel pits.

A portable gravel operation is a fast moving business. A crushing contract can be let and within 2-3 weeks be completed and the land restored, with the exception of seed germination of course. The crushing may take only 2-3 days but exceed the 10,000 cubic yards requiring reclamation contracts. The mechanics of the present law would make it impossible to complete the paper work within this short time.

Both SB 94 and SB 108 exclude sand and gravel because of the above reasons. I would propose that your new law be worked out from these bills.

A Senate Bill specifically applying to sand and gravel pit reclamation only has also been introduced. I do not argue with the intent of the bill. I only ask that when work in the pit is already under bond by a public agency, that this requirement not be duplicated due to the short term nature of most operations. I request that permit and administrative procedures be kept very simple. Inspection should be handled through existing State facilities, such as the Department of Highways, to avoid creation of a large expensive staff to accomplish a simple purpose.

We are very conscious of the need for adequate reclamation and I can show you some very successful results on our projects. I only ask that a two day gravel crushing project not be subjected to the same rules as a 50 year coal mining operation.

Thank you.

EX 19

REPRODUCED FROM BEST AVAILABLE COPY

SUPPORT SENATE BILL NO. 94

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

My name is Kenneth Kaighn and I live at 148 Wedgewood here in Helena and I represent not only the members of the Operating Engineers Union presently earning their living in the coal strip mines in Eastern Montana, but I feel I also represent the hundreds of unemployed and under-employed citizens of Montana who will have a chance at a good year-around job in the coal fields, if this bill is passed.

This bill provides for the orderly development and reclamation of the land in strip-mining industry and will also provide a vast improvement in Montana's economic structure without significant damage to ecology.

This bill contains expertise and knowledge to properly regulate this new industry and we urge that you, the committees, pass this bill.

I Thank You.

EX 20

MUSSELSHELL VALLEY CHAMBER OF COMMERCE

J. Kuzara

ROUNDUP, MONTANA

THE FOLLOWING IS A COPY OF A PETITION SIGNED BY MEMBERS OF THE MUSSELSHELL VALLEY CHAMBER OF COMMERCE, ROUNDUP, MONTANA, AND DATED JANUARY 31, 1973.

A ban on strip mining of coal in the Bull Mountains is advocated by Senator Mike Mansfield in a Billings Gazette Article dated January 20. He advocates that ALL strip mining should be prohibited until protection of the environment can be guaranteed. He maintains that the Bulls are considered to be fragile and inappropriate for restoration and reclamation, therefore excludes them permanently from any strip mining operation.

We the undersigned members of the Musselshell Valley Chamber of Commerce note that:

1. There is enough indication from the existing test pit that reclamation is not only possible, but can enhance the environment, assuring the further carrying out of good reclamation practises.

2. Under existing Federal Mine Safety Laws it is impossible for our small underground mines to operate, thus forcing them to surface operations.

3. The largest portion of the buildings, public and private, in the Roundup area are heated by coal and it is substantiated that many coal customers throughout the state depend upon the Roundup mines to supply their needs.

4. At this time it is not economically feasible to suggest conversion to another source of heat.

5. Area fuel oil distributors indicate the lack of supplies of gas and oil in times of high demand. Any significant increase of users will be impossible with the existing supplies.

6. In a period of record-high unemployment in the State, very large out-migrations from small communities and the inability of existing agriculture to adequately support those small communities, it is inconceivable to deny those communities the sensible, orderly development of their resources.

We feel that a ban on strip mining in the Bull Mountains will be very much against the best interests of this area. We do, however, support strict reclamation practices to insure our quality environment.

SIGNED
MUSSELSHELL VALLEY CHAMBER OF COMM

(SIGNATURES FOLLOW)

MUSSELSHELL VALLEY CHAMBER OF COMMERCE PETITION SIGNATURES

JANUARY 31, 1973

NAME	BUSINESS
James L. Wade	Roundup Bottling Co.
Delbert L. Summers	Roundup Bottling Co.
Ted Haverland, Jr.	A & W Drive-In
Monty L. Sealey	Retail Sales
Clyde Brewer	Contracting
Iris Cain Erbe	Florist
Roy C. Rodeghiero	Attorney
John D. Armstrong	Banking
W. D. Bianchi	Rancher
Charles E. Ferris, Vice President	Banking
Ben F. Yates	Banking
J. A. Wier	Wier Furniture
Howard Cordingly	Grocer
Louise G. Rasmussen	Newspaper
J. K. Kuzara	Rancher
T. P. Bain	Store owner
Luther G. Egge	Optometrist
Jack H. Carlson	Coal Mining
Ron Richardson	Masonry
Roger Leach	Insurance - real estate
Hershel M. Robbins	Creamery Manager
Orley Arthur, Jr.	Veterinarian
D. J. Kautzmann	
H. W. Mackey	Lumber & Hardware
George C. Thomas	The Arcade
Alden Fredin	Store Owner
Ralph Gildroy	President, Chamber of Commerce

Ex 21

Ellen witness

NORTHERN PLAINS RESOURCE COUNCIL
437 STAPLETON BUILDING
BILLINGS, MONTANA 59101
(406) 259-6114

In the State of Montana there is no evidence demonstrating reclamation capable of sustaining itself over a long period of time, nor instances or evidence that strip mined land can be returned to productive use. Before additional land is committed to strip mining further experimentation and study is needed to prove that reclamation is possible in Montana. Therefore, the Northern Plains Resource Council endorses a moritorium on further state leasing and state reclamation contracts, licenses or permits.

However, for strip mines presently in production and if any further strip mining is to be allowed in the State of Montana the following requirements of reclamation must be contained in any law:

1. That the reclamation law contain provisions for surface owner permission.
2. That the burden of proof for reclamation lies with the operator and not with the State of Montana or its people.
3. That the permit system is based on selective approval, rather than selective denial, and in the absense of the operators demonstration of successful reclamation the State of Montana has no authority to issue a mining permit.
4. That the law require public notice of pending mining permits and public hearings before permit approval and before bond release.
5. That the provisions of the application for permit and the reclamation plan be specific and not left to a State Department with broad discretionary powers.

NORTHERN PLAINS RESOURCE COUNCIL

The following provisions are imperative for a strong reclamation law in the State of Montana:

*That reclamation must consist of reconditioning land affected by surface mining to a condition such that it may be used as it was prior to surface mining.

*That the State license each operator and require both prospecting permits and operating permits, and that the operating permit be valid for only two years.

*That adequate information be required in the permit application, i.e. surface maps and geological cross-section maps, detailed mining description plan, number of acres disturbed, nature and volume of waste and refuse to be removed, state to which the land is to be used after mining, and avoidance of public nuisance and endangerment.

*That a reclamation plan be required before mining begins and that such a plan include grading and contouring, high wall reduction, replacement of topsoil, reseeding and planting, and a time table.

*That the burden of proof for reclamation lies with the operator and not with the State of Montana or its people.

*That the State of Montana have the right of selective approval for operator permits.

*That the reclamation law ban contour mining.

*That public notices of permits be required and that public hearings be required before permit approval and before bond release.

*That the reclamation bond be in the amount that it would cost the State to reclaim the land and no less than $5000.

*That the reclamation law contain provision for surface owner permission for exploration permits, proposed use of the land after mining, any permanent water impoundments, and deviation from original contour of the land.

*That the citizens of the State of Montana have the right to mandamus action against the State of Montana.

*That the law contain adequate provisions for appeals both for the operator and the citizens.

Ex 22

INTERNAL MEDICINE
ALFRED M. FULTON, M.D.
ALLAN LEE GOULDING, M.D.
GEORGE R. BROSIUS, M.D.
PAUL V. HOYER, M.D.
WARREN D. BOWMAN, JR., M.D.
HEMATOLOGY
DONALD L. HICKS, M.D.
NEPHROLOGY
RONALD H. SMITH, M.D.
INFECTIOUS DISEASES
PHILLIP E. GRIFFIN, JR., M.D.
RHEUMATOLOGY
WALTER C. DEGNAN, M.D.
CARDIOLOGY

GENERAL, THORACIC, CARDIAC AND VASCULAR SURGERY
EDWARD W. GIBBS, M.D.
JOHN W. HEIZER, M.D.
O. ADRIAN JOHNSON, M.D.
HEWES D. AGNEW, M.D.

NEUROSURGERY
ROBERT C. WOOD, M.D.
LASHMAN W. SORIYA, M.D.

ALLERGY
L. BRUCE ANDERSON, JR., M.D.

DERMATOLOGY
THOMAS P. GORMLEY, M.D.
WILLIAM H. SMOOT, M.D.

OBSTETRICS AND GYNECOLOGY
LEONARD A. BARROW, M.D.
EDWARD F. RANDAK, M.D.
H. C. KAYSER, III, M.D.
LEE A. RAITZ, M.D.

OPHTHALMOLOGY
JAMES S. GOOD, M.D.

ORTHOPEDICS
WALTER H. HAGEN, M.D.
STERLING R. HAYWARD, M.D.
STANLEY J. YODER, M.D.

OTOLARYNGOLOGY
STEPHEN A. KRAMER, M.D.

PATHOLOGY
EDWIN C. SEGARD, M.D.
GORDON L. COX, M.D.

PEDIATRICS
ALLEN P. HARTMAN, M.D.
W. DEAN WILCOX, M.D.
RICHARD C. REEM, M.D.

UROLOGY
ROBERT S. HAGSTROM, M.D.
JOHN A. SHAW, M.D.
C. DALE VERMILLION, M.D.

RADIOLOGY
JERRY D. WOLF, M.D.
ALAN D. FLYNN, M.D.
V. PAUL JOHNSON, M.D.
WILEY R. BLAND, M.D.
CONSULTANTS

ADMINISTRATION
ROBERT G. TIRRELL
KATHLEEN SULLIVAN
RICHARD W. JOHNSON

THE BILLINGS CLINIC
NINTH AVE. NORTH AT BROADWAY
BILLINGS, MONTANA 59103
406-252-4141

February 1, 1973

Mr. Arthur Shelden, Chairman
National Resources Committee
House of Representatives
State Capitol Building
Helena, Montana 59601

Dear Mr. Chairman:

By way of introduction, I am Doctor Dale Vermillion and I am currently practicing urology in Billings. Prior to settling in Billings, I grew up in Kansas and have lived in Boston for the last ten years. Since I grew up enjoying hunting, fishing, and outdoor activities in general, it was soon apparent that the industrialized East was not where I wanted my children to grow up. As you know, there is still a shortage of doctors in most areas in the United States and thus we could pretty much chose where we wanted to settle. It is obvious that there are plenty of places in the Northwest where good hunting, fishing and skiing are still available. However, Montana seemed unique to us in that it was relatively sparsely populated and combined the mountains with the open prairies of the eastern part of the State. In short, it seemed to offer just about all the outdoor activities that I was looking for in an unspoiled environment. Unfortunately we settled in Montana thinking it would remain that way.

Let me state at this point that I am a Republican and have generally been in agreement in the past with those advocating industrial expansion and, of course, making a reasonable profit at the same time. Therefore it is somewhat of a surprise, perhaps, that I have recently become as opposed to the industrialization of eastern Montana as I am. It seems unlikely to me that strip mining can ever ultimately be stopped when given the coal resources that are there. However, the devastation that it seems likely to create at present hardly seems worth what the coal companies offer, namely, short-term prosperity for a small portion of Montana and a very big profit for a very small sector of the Montana business community. It seems to me that Montana should demand, if their coal is to be mined, that these companies reclaim the land according to very stringent reclamation rules. I think these rules should include the State's right to deny mine permits in cases where reclamation seems doubtful, reclamation of land to a condition equal to its premined state, the right of the State and/or its citizens to sue these companies if they do not fulfill their obligations, no mining or construction of energy producing plants until all permits and questions have been answered to the public's satisfaction and the right of owners of the surface to prohibit strip mining on their land if they so chose. In short, if they are to strip mine Montana, let's make sure we have some

control over it, that we do it right, and that the coal companies pay a fair price for it. If the coal companies feel that it is just too expensive this way, that's fine. The coal will keep for a few more years and some day it will probably be put to a better use than just being burned.

In a similar vein, I would hope in the future that the State, through its laws, would be able to encourage the power companies to build their power plants elsewhere. This power is obviously intended for other areas' industrial needs and thus it seems only fair that they should pay for their prosperity by also accepting the pollution that their energy needs require. Furthermore, it seems to me that producing the power elsewhere or at the area that it is to be used would mean better utilization of the coal since the losses in electrical transmission would be cut significantly. Perhaps this would ultimately be more expensive to the user but it might also stimulate them to question exactly which energy needs are important. Furthermore, to pollute Montana's air and country-side to provide Omaha with air-conditioning and Kansas City stockyards with sewage purification plants must certainly seem like a good deal to them and a pretty poor one to Montana. In short, I think Montana should proceed slowly and with circumspection in regards to strip mining and to the development of power projects in our State. Inspite of the coal and power companies' pressure, there is yet time to look for alternate power sources, to get better answers to reclamation problems, and, in short, to seek a better and more just solution for Montana and its citizens than those currently being offered by the local power companies and coal extraction companies.

Thank you very much for considering my viewpoints.

Sincerely yours,

C. Dale Vermillion

C. D. Vermillion, M.D.

CDV:jp

This statement has been written to urge passage of the strongest possible strip mine reclamation law. Great pressure will be exerted upon individual legislators by coal company representatives to compromise on key points in order to pass a bill that "the coal companies can live with." Of far greater concern should be protection of the environment and particularly the land so that it may continue to "live" after the coal has been stripped.

The vital issue is protection of the environment. Some may argue that there is nothing in Eastern Montana worth saving. This is a disastrous attitude! We have allowed too many of our resources in the United States to be squandered by those with similar feelings. We must realize that our land, and its resources, is finite, not infinite. We must respect and protect what is left. The manner in which we face up to this problem will be of far greater consequence to the future of Montana and the country as a whole than any measureable value that may be attatched to the coal. At some point the people have to decide what is important and take their stand. We must have priorities and in this instance our greatest concern is for the environment. If a choice must be made, the land comes first, then the coal.

The companies that now wish to strip mine Montana have demonstrated in the most vivid manner what their priorities are in respect to coal and the environment. The record they have left and continue to leave throughout the coal fields of West Virginia, Virginia, Kentucky, and other Eastern states speaks for itself. If we fail to see and understand exactly the low regard which these companies place on the environment and the land they have stripped we are both blind and naive.

Without dwelling on the technical aspects that may contribute to a successful program of reclamation, there are several non-technical elements that seem critically important. These include cost which is going to be great, effort which is going to have to be prodigious, and research which necessarily will have to be

innovative. Above all, in order for this huge task to be carried out with success, it is going to require tremendous desire and zeal.

Nowhere do we see in the record of these same coal companies any evidence to give us confidence that they are willing to make this effort. These are coal companies. They are not reclamation companies. There are thousands of square miles of dessimated, squandered land that attest to this fact.

Nor can we count on any particular concern for Montana and its unique attributes to be a stimulous to the coal industry in this large task of reclamation. These companies are controlled by interests outside the state and we are, for the most part, dealing with men who neither live nor raise their families in Montana, despite what their paid representatives in Helena would have us believe.

In summary, we are faced with a dilemma in this strip mining question where our first concern and priority must be for protection of the land and environment. Reclamation of strip mined land is going to require a maximum effort if there is any chance for success. Yet, the companies that would strip the land have vividly demonstrated they have little inherent interest in reclaiming the land. Coal companies have never carried out or accomplished reclamation on any meaningful scale. They have yet to show that they can mine and reclaim. The onus is on them.

The law you pass must be so thorough and so exacting that it will reverse the entire previous history of strip mining practices as carried out in this country. It should include the concept of selective denial in order that lands which cannot be reclaimed are not mined to begin with. The topsoil must be returned. There must be no limitation on seeding. Seeding must continue until success is achieved. The land must be graded back to its original contour. All these are measures to insure that the companies take the proper steps in order to reclaim the land.

There must also be a set of provisions to insure that coal companies make the needed effort. Meaningful bonds must be posted until reclamation is proven in order to assure the necessary financial effort on the part of the strip miners. An annual review of the company's permit is mandatory for if at any point in time it becomes clear that the land is not or cannot be reclaimed, the environment must be served. The coal companies argue that their investment must be protected. But there must be a higher priority shown than coal company investments and that is protection of the environment.

In all considerations concerning the reclamation bill, the final question must be directed toward what can be done to protect the environment. The coal companies leave no doubt that they will do only that which is required of them by law in order that they may strip the coal. It is your job to write a law that is so clear cut that they will be forced to expend the required money and effort to achieve successful reclamation. On this there can be no compromise.

Steven D. Gross, M.D.
Billings, Montana

February 6, 1973

The eleventh meeting of the Natural Resources Committee was held in the Highway Auditorium on February 6, 1973. The meeting was called to order by Chairman Bill Bertsche who announced that this was the first of the meetings on 94, 108, 145 and 252 and that there would be another meeting on Thursday, Feb. 8 in the same auditorium to hear discussion concerning bentonite and sand and gravel legislation.

Senate Bill 145 was explained by Senator Klindt as a bill to permit industry to live and prosper, but not at the expense of Montana.

Senate Bill 252 was explained by Senator McGowan who mentioned 443 as a companion bill. His statement is attached as Exhibit 1.

TED SCHWINDEN, Land Department, explained SB 94, which he said represented several months' drafting work, had been prepared and 300 copies distributed for study.

Senate Bill 108 was explained by Senator Darrow. His statement is attached as Exhibit 2.

PAT SWEENEY handled the first portion of the meeting with his first witness being ELLEN WITHERS, land owner. She spoke on her desire for selective approval rather than selective denial, giving it a more positive approach. She said she felt the bill should make sure it was the big company who was responsible, not the little sub-contractor. She also stated the need to see that core holes were filled properly so that the holes do not collect water and mix sulfur with the water in the aquifer.

MARY LEE REESE, League of Women Voters, left a copy of her statement which is attached as Exhibit 3.

CLAUDIA MELOY, AAUW, left a copy of her statement which is attached as Exhibit 4.

JACK RACHIE handled the half hour for the Industries and stated he was with Peter Kewitt & Sons working for the Decker Coal Company. He agreed with minor changes in the bill but stated he felt that, in SB 108, the reclamation figure was awfully high. He said he felt a permit should be renewable as long as the operator is in compliance with the reclamation law. On bonds, he said he felt the bond amount should be related to the cost of reclamation.

PAT HOOKS, representing the Knife River Coal Company, said he felt there should be a 90-day time limit on letting a coal company know if they would get a permit.

GENE PHILLIPS, Pacific Power and Light, concurred with Hooks.

BOB CORETTE, Western Energy, concurred with Hooks.

TED SCHWINDEN said the time limit was very difficult because the law required tests being taken that could not be returned in 90 days.

Questions were asked of the different witnesses by the committee members.

Having a little time left, the Chairman asked if those present were ready to go into Selective Denial.

JACK RACHIE referred to Tom Gwyn at the Friday evening public hearing and said he felt a denial should not be made on the basis of a slope in a bad place. He said uranium deposits usually follow old river beds and are underground, and that phosphate rock will often leave a high bank.

ELLEN WITHERS strongly favored selective denial but reiterated her statement in regard to selective approval. She said she was opposed to contour mining, since it could develop land slides.

MARY LEE REESE concurred and said the state should have the authority of selective approach, and would support SB 108.

The meeting adjourned.

Wm. H. Bertsche, Chairman

SUPPORT SENATE BILL NO. 94

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

My name is Kenneth Kaighn and I live at 148 Wedgewood here in Helena and I represent not only the members of the Operating Engineers Union presently earning their living in the coal strip mines in Eastern Montana, but I feel I also represent the hundreds of unemployed and under-employed citizens of Montana who will have a chance at a good year-around job in the coal fields, if this bill is passed.

This bill provides for the orderly development and reclamation of the land in strip-mining industry and will also provide a vast improvement in Montana's economic structure without significant damage to ecology.

This bill contains expertise and knowledge to properly regulate this new industry and we urge that you, the committees, pass this bill.

I Thank You.

4/6/73

COMMITTEE ON Natural Resources BILL NO. [illegible]

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
[illegible]	[illegible]		
[illegible]	Farmer		
[illegible]	[illegible]		
J.F. RATCHYE	DECKER COAL CO.	✓	
[illegible]	Montana Env. Info. Center	✓	
JIM HOOKS	[illegible]		
[illegible]	SBA		
[illegible]	Dept of Natural Resources	✓	
[illegible]	Dept of Natural Res		
[illegible]	Dept Fish & Game	✓	
[illegible]	Pacific Power & Light		
[illegible]	Dept of Fish and Game	✓	
[illegible]	Western Energy		
[illegible]	Dept Fish & Game		
[illegible]	Environmental Info. Ctr.		
[illegible]	OD Weather Bureau		
[illegible]	OPRD - Research		
[illegible]	[illegible]		
[illegible]	[illegible]		
[illegible]	Mont Wildlife Federation	✓	
[illegible]	[illegible]		
[illegible]	[illegible]		
[illegible]	[illegible]		
[illegible]	[illegible]		
[illegible]	Sanjo		✓
[illegible]	[illegible]		

(Please leave prepared statement with Secretary)

COMMITTEE ON _____ BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Joe Eglin	Mont. Stockgrowers		
Pat Noble	Mont. Petroleum Marketers Assn.		
Jack Ribbon	MPA-RMOGA		
J. Richards	Kerr-McGee		
Mary Margaret Kennedy	Montana Power Co.		

(Please leave prepared statement with Secretary)

Make Copies

AAUW Testimony
Strip Mining Legislation

Permit Requirements
2/6/73

The Montana Division of the American Association of University Women feels strongly that the following points should be included in the 1973 Strip Mining Legislation.

a) the minerals covered shall included coal, clay, bentonite, phosphate rock, and uranium.

b) the application shall be filed with the administrative agency, the Department of Natural Resources. While the Lands Department has done an admirable job in the past with reference to reclamation, (given the regulations and small staff with which they had to work) the expansion of duties called for in current strip mining legislation would necessitate the more qualified personnel of the Dept. of Natural Resources. Also, since this legislation would regulate the extraction of Montana's natural resources, the logical administrative agency would be Natural Resources.

c) the system shall be one of annual permits, with renewal based upon compliance with the law.

d) the information required with the permit application shall be as explicit as possible and include a detailed description of the type or types of strip mining methods and techniques to be used in the area.

e) the permit application shall be accompanied by a fee of $500.00/ affected acre, and $25.00/affected acre if less than 50,000 tons/year are removed. This is essential for implementation.

f) a bond shall be required, the amount of which shall be determined by the state based upon the cost of reclamation if the state were to have to complete the proposed plan. The minimum shall be $5,000.00.

g) Prospecting permits shall be required, and shall be accompanied by a permit fee and bond requirements as set forth in SB 108.

h) a public hearing on a permit granting shall be mandatory if there is protest to such a granting.

i) surface owner permission shall be required for granting of prospecting or mining permits.

MONTANA READY MIX AND CONCRETE PRODUCTS ASSN., INC.

PHONE 442-1185 • P. O. BOX 797 • HELENA 59601

Feb. 5, 1973

SENATE NATURAL RESOURCES COMMITTEE

Honorable Committee:

I am Paul M. Foster, representative of the Montana Ready Mix and Concrete Products Association, Inc. and am here to speak in behalf of the sand and gravel industry.

The sand and gravel industry in Montana is a basic industry that has operated in Montana since construction was started in Montana.

This industry provides products that are necessary to construction of highways, dams, building sidewalks, bridges, water and sewage pipelines, houses and railroads, ect. In fact, any type of new construction requires the use of some type of sand and gravel or a product utilizing sand and gravel.

This Association maintains that current legislation regarding reclamation, with coal mining in mind but including sand and gravel will create a few hardships, and place unnecessary burden on our local industry.

We therefore request that sand and gravel be deleted from current reclamation legislation and be allowed to operate under the "Montana Open Cut or Strip Mined Reclamation Act" of 1971.

Respectfully submitted,

Paul M Foster

Paul M. Foster, Director
Montana Ready Mix & Conc. Products Ass'n, Inc.

SCIENTIFIC PROGRESS IN OUR INDUSTRY

February 8, 1973

The Thirteenth meeting of the Natural Resources Committee met at 10 o'clock at the Highway Auditorium. Mr. Dobson, Montana representative of the Friends of the Earth, showed a brief film of mining operations in the United States, the machinery used, and the reclamation or lack of reclamation of the areas.

The meeting was called to order with a roll call and time allocated for the hearing.

Senator Thiessen talked on the method of operation and other points, statement included, exhibit 1.

Pat Sweeny, research council, took charge of the government testimony, and called on Mr. Harold E. Malde who presented a written statement, enclosed, exhibit 2.

Mary Lee Reese, League of Women Voters, statement attached, exhibit 3.

Ted Schwinden spoke briefly and presented an amendment, attached, exhibit 4.

James D. Hustad, representing bentonite mining, spoke on the difficulty of using the same set of rules for mining bentonite as coal or other minerals due to the unique aspects of this particular type of mining. He represented the Hallet Mining Co.

W.P. Schmeckle, Western Energy Operations, spoke on making rules so stringent that the coal companies could not use innovation.

R.W. Manchester, Missoula, representing the Northern Region of Foresters, submitted amendments as well as a written statement, attached, exhibits 5, 6 and 7.

Tom Gwyn spoke briefly; he represented the Knife River Coal Company, and said he favored the amendments submitted by Senator Thiessen.

Ted Schwinden gave copies of a letter from Merton T. Foster on bentonite mining, attached statement, exhibit 8.

A statement was presented by Paul M. Foster in regard to the Montana Ready Mix and Concrete Producers Association, Inc., exhibit 9.

An editorial from the Bismarck Tribune was given the committee from Sen. Thiessen, exhibit 10.

Questions were asked by the committee and answered by various members.

The meeting adjourned.

Wm. H. Bertsche

NAME: James B. Husted DATE: 2-8-73

ADDRESS: Duluth, Minn.

PHONE: _____

REPRESENTING WHOM? Hallett Materials Co

APPEARING ON WHICH PROPOSAL: Iron Ore Education Bills

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: Hallett Mines Iron Ore in Northern Minnesota is included in most bills being considered today. We would like to express our situation.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Edward M. Dobson DATE: 8 Feb 73

ADDRESS: Box 882 Billings MT 59103

PHONE: 656-5028

REPRESENTING WHOM? Friends of the EARTH

APPEARING ON WHICH PROPOSAL: Reclamation

DO YOU: SUPPORT? —— AMEND? —— OPPOSE? ——

COMMENTS: appearing at request of the Chairman in order to discuss Contour strip mining.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R W MANCHESTER DATE: 2/8/73

ADDRESS: FEDERAL BLDG. MISSOULA, MONT

PHONE: 549-6511

REPRESENTING WHOM? U.S. FOREST SERVICE

APPEARING ON WHICH PROPOSAL: 94, 108, 145, 352

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS: STATEMENT AND SUPPORTING DATA GIVEN TO SECRETARY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 22, 1973

The Natural Resources Committee was called to order by Chairman Shelden at 10:30 a.m. in room 405 with a quorum present.

The following resolutions and bills were considered:

SENATE JOINT RESOLUTION 23:
Rep. Huennekens moved that SJR 23 be concurred in, it was seconded by Rep. Castles, and the motion carried unanimously by those present (Lucas, Schye, Colberg, Schepens absent).

SENATE JOINT RESOLUTION 24:
Rep. Johnston moved that SJR 24 be concurred in. The motion carried unanimously except for those absent (Lucas, Schye, Colberg, Schepens).

SENATE JOINT RESOLUTION 33:
Rep. Stoltz moved that SJR 33 be concurred in. The motion carried unanimously except for those absent (Lucas, Schye, Colberg, Schepens).

SENATE JOINT RESOLUTION 35:
Rep. Walborn suggested that on page 2, line 6 the word "could" be changed to "would". Rep. Swanberg moved that as so amended SJR 35 be concurred in. The motion carried unanimously by those present (Schye, Colberg, Schepens absent).

SENATE JOINT RESOLUTION 37:
Rep. Quilici moved that we accept the amendments proposed by the chief sponsor, Senator Vainio. The motion carried unanimously except for those absent (Schye, Colberg, Schepens). Rep. Quilici then moved that SJR 37 be concurred in as amended. The motion carried unanimously except for those absent (Schye, Colberg, Schepens).

SENATE JOINT RESOLUTION 39:
Rep. Huennekens moved that SJR 39 be concurred in. There was discussion by the committee and then the question was called. The resolution passed unanimously except for those absent (Schye, Schepens).

Chairman Shelden then opened the committee meeting to a hearing on the following bills:

SENATE BILL 94:
The first proponent speaker was Ted Schwinden, Commissioner of the Dept. of State Lands. He stated this strip mining and reclamation bill covers five minerals--coal, clay, bentonite, phosphate rock, and uranium. He made the statement that bentonite mining disturbed more acres last year than coal mining.

Senator Bertsche, the chief sponsor, was the next speaker. He said the bill had been worked out with the co-operation of the land department, many other agencies, and individuals (some of whom had worked with strip mining). There had been ten drafts before this bill was accepted by the committee. Sen. Bertsche stated that SB 94 is not specific about all details; because with something so complex laws are needed that will administer under widely varying conditions. This bill prevents contour mining, permits selective denial, makes sure preplanning is done, and spells out reclamation. He stated the difference between this bill and HB 555 is that SB 94 trusts government agencies.

Ted Schwinden spoke again. He, too, stated the bill did not spring full blown overnight. He stated they had sent copies of the bill to every federal and state agency which might be interested, and he had with him a file of resulting correspondence (some saying the bill way too strong, some too weak, etc.) which he told the committee members they were welcome to check through. Mr. Schwinden stated the bill permits annual renewals by the company as long as they operate within the law. He mentioned there would be a disturbed acreage fee of $200 per acre--to be collected once on each acre. This money would be placed in a separate account to be used by the department as needed for reclamation.

Mary Lou Reese, League of Women Voters, was the next proponent speaker. She said the League supports the provisions of selective denial and that a person can request a hearing. They did feel that, since the bill leaves more to the discretion of the State Land Agency, it would only be as strong as the administration.

Pat Sweeney, Northern Plains Resource Council, stated this was a strong bill that is perfectly acceptable if some amendments are added. They felt some definitions should be expanded and strengthened, and felt that some sections from HB 555 could well be added. He felt that public hearings should be had before permits are granted and before bond is released. Mr. Sweeney said his group plans to submit suggested amendments to the committee.

Thomas A. Gwynn, Knife River Coal and Coal Council, was the next speaker. He had a list of recommended amendments which he left with the committee. His written testimony is exhibit 1.

Chairman Shelden appointed a subcommittee to look into SB 94--Rep. Schepens, chairman; Rep. Colberg; and Rep. Walborn. They will report back to the committee on Tuesday.

Questions were asked by the committee. Rep. Ainsworth asked the cost per acre to reclaim. Mr. Schwinden said this was variable but for coal would perhaps be from $750 to $1000. Another subject brought up was high walls (the last cut) and the desirability of reducing them to 18° or less.

SENATE BILL 404:
Senator Bertsche, the chief sponsor, was the first speaker. This bill says the coal company must work all the seams that are workable. This would give full value for the land we have in Montana and not waste resources. The coal company could not come back and mine an area again after it had been reclaimed.

Questions were asked by the committee.

SENATE BILL 426:
Senator Bertsche, the chief sponsor, said this bill says that our state agencies will give advice to the Indians on their coal problems if they request it. He stated that Indian land is still part of Montana and what happens there will definitely affect Montana citizens.

Ex I

INTERNAL CORRESPONDENCE

LOCATION Bismarck, North Dakota

DATE February 21, 1973

WRITER Thomas A. Gwynn

MEMORANDUM

SUBJECT Montana SB-94

Knife River Coal believes that SB-94 in its present form is essentially workable but there are several areas of concern that should receive attention prior to approval:

(1) The application fee and acreage fee on page 33 should be reconsidered. The acreage fee presumably would be a one time fee, and to be otherwise would constitute double payment and would be unfair and burdensome on the operator. In view of the substantial increase in taxation currently under consideration an acreage fee of $200 seems excessive, particularly in view of the fact that this is several times the usual monetary value of the lands involved in the first place. If an acreage fee is to be used it is suggested that $35 per acre is more appropriate.

(2) There is still concern about the "method of operation" and the control to be exercised by the Department over the mining operations. The Department does not have and may very well be unable to obtain the expertise necessary to control actual mining methods. With the tremendous capital investment required it seems unreasonable that any operator be faced with the possibility of mining operations being interupted, modified, or controlled by personnel having neither the expertise nor a monetary vested interest therein. I can recognize the desire of the Department to be certain that operations are not started unless an operator is responsible and is using proper equipment, but once an operation has been approved the mine operator should be free from undue interference. I am concerned that the present language of the act does not protect the operator's right to operate his mine.

(3) Section 11 as presently worded would immediately shut down the Savage mine because our method of operation creates a temporary bench during the mining operation, which temporary bench is in existence for less than one year until the second pass by the dragline. The intent of this section is that no permanent benches or fill benches be left. The word "permanent" should be added to protect the present method of operation. At Savage we have no acceptable alternative but to continue operations in the present manner.

(4) Also in Section 11, reducing the highwall to 18° from the horizontal is still considered to be an unreasonable requirement. Actually 35° is more reasonable but Knife River Coal consideres 25° to be a liveable requirement. It should be pointed out that farm machinery can operate on 25° slopes and there are streets in Helena with 25° slopes. Further on in this same section there is contradictory language requiring that the highwall be sloped "at a maximum angle not to exceed the approximate original contour of the land". This provision should be eliminated as this could reduce the 18° requirement to zero degrees and there is simply no way that a highwall can be sloped to the toe of the spoil bank without exceeding the original contour of the land. This is an absolute physical impossibility as was demonstrated to the joint committees in

one of the first hearings held. For one thing there simply is no dirt available to completely backfill the final cut, and sloping the highwall contemplates changing the contour.

(5) While the situation may never arise in eastern Montana, the topsoil provision on page 43 should have a limiting depth to which topsoil should be returned to the spoils. As it presently reads all topsoil must be replaced. If 50 feet of topsoil were present that would have to be replaced. Obviously the intention of this section is to replace sufficient topsoil to properly reclaim the lands. Four to six inches have proven adequate for highway rights-of-way so there is no reason why a limiting depth of one foot should not be included in this section.

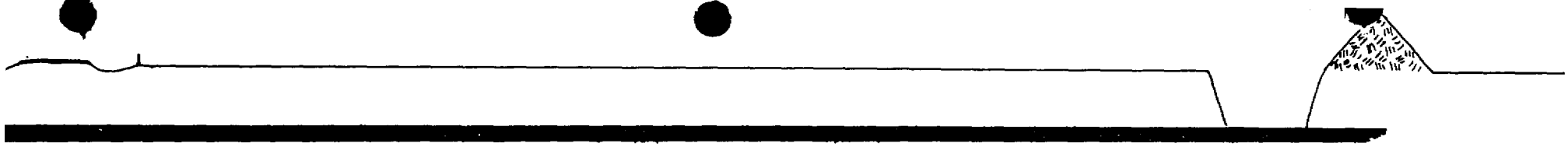
(6) Sections 14 and 15 create a problem in that the operator is required to maintain an adequate bond to assure proper establishment of vegetative cover but at the same time all vegetation becomes the property of the landowner. The operator must be protected from the possibility of any landowner resuming use of such lands prematurely ruining the vegetative cover before it is fully established. This has happened in other states and it would not be fair to forfeit bonds on lands that were thus disturbed through no control of the operator. Accordingly I have made a suggestion for amendment to section 15.

(7) As Section 17 now reads the bond could be forfeited and the operator still be required to pay into the reclamation account a sufficient sum to reclaim mined lands. The purpose for forfeiting bonds is to apply these bonds towards such reclamation and the language needs to be clearer in this respect. Hopefully my amendment will clear this up.

(8) The last amendment I suggest is a very important one and we believe that Section 27 must of necessity be changed because the timing involved could very well shut down every mine in the state. The principle of this section is acceptable in that the state should be able to bring existing operations under the new Act and we feel that this should be done by requiring each operator to file within 60 days after the effective date of this Act a properly prepared application and reclamation plan. At that point the time for actual cancellation of existing contracts must of necessity be determined by the speed with which such applications are processed by the state and actual cancellation must not occur until the new permit is issued. The reason for this is obvious since applications for permits under the 1971 act have been under consideration for a considerable period of time and experience has shown that approval of such permits may well be delayed through no control of the operator.

Thomas A. Gwynn

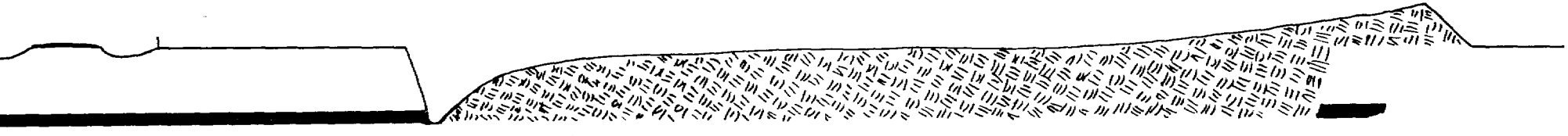
TAG:jg



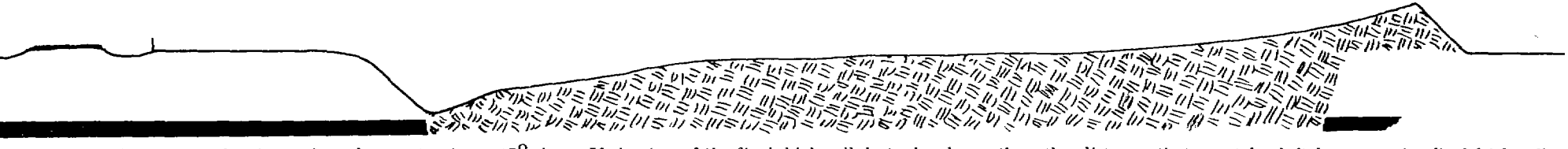
irst sequence, the material taken from the first pit, called a box pit, is piled on top of ground outside the coal pit area and as such the elevation of the first pile of overburden is rably higher than the surrounding terrain.

econd sequence, mining has advanced several pits. Note that the material from the box pit has been taken towards the mining area.

rd sequence shows the final pit next to the barrier to be left along side the highway.



ourth sequence, the coal has been removed and the overburden pile has been taken toward the final highwall to the extent that fill material is available.



ast sequence the highwall has been shaped so as to give a 45^{o} slope. If shaping of the final highwall is to be done, then the distance that must be left between the final highwall and property line, highway, cemetery, etc., should be measured from the toe of the highwall and the boundary line, highway, cemetery, etc., so as to allow shaping of the highwall to a f 45^{o}. Note that fill from the original box pit has been taken as much as possible toward the final highwall but that the back side of the pile (on the right hand side of the sketch) a rather steep slope. The way this slope can be overcome is by sloping the fill from the box cut to the right hand side of the sketch which in effect covers additional area.

on is directed to the fact that when large seams of lignite are removed in shallow or medium depth overburden, the overburden piles may not be as high as the original contour errain.

SENATE BILL 94:
Chairman Shelden opened the meeting to a consideration of this bill. He stated that many man hours had been given to going over this bill. The subcommittee from our committee had worked with three members from the Senate subcommittee, in an effort to come up with a good reclamation bill.

Rep. Colberg went through the amendments prepared by this combination subcommittee. He stated that one amendment had been inadvertently omitted. This was on page 30, line 3 following the word "THEREAFTER" and it was to add the following: "upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date."

Chairman Shelden mentioned leaving out the disturbed acreage fee and having it included in a taxation bill. This would amend page 33, line 14 following the number and punctuation ($50) by striking all material through the word "YEAR" on line 24; and it would mean not adding to the title the words "PROVIDING FOR AFFECTED ACRE FEES", which is in the suggested committee amendments.

Rep. Schepens moved that we concur on the above amendments.

Rep. Schepens mentioned that he and Rep. Schye had flown down to Forsyth and looked at a bentonite plant. Rep. Schepens said that bentonite is like "gumbo", that it is a binding agency in the making of iron ore, and the producers can sell all they mine at markets in the East. The profit is marginal, due partly to rail costs, and it is mined in desolate country with little top soil or vegetation. It was his and Rep. Schye's opinion that bentonite should not be included in a coal bill.

Rep. Lucas moved that references to bentonite be struck from SB 94. The motion carried unanimously except for those absent (Ainsworth, Lien, Lundgren, Quilici, Swanberg, Johnston).

Action was now taken on Rep. Schepens motion. The motion carried unanimously except for those absent (Ainsworth, Lien, Lundgren, Quilici, Swanberg, Johnston).

Rep. Colberg moved that SB 94 be concurred in as amended. The motion carried unanimously except for those absent (Ainsworth, Lien, Lundgren, Quilici, Swanberg, Johnston).

Meeting adjourned at 12:30 P.M.

Respectfully submitted,

Arthur H. Shelden

ARTHUR H. SHELDEN
Chairman

eas

shall provide the trustees with his written acceptance of the conditions of such reelection within twenty (20) days after the receipt of the notice of reelection. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

Approved: March 15, 1973.

CHAPTER NO. 325

An Act Creating "The Montana Strip Mining and Reclamation Act" and Providing for the Control of Prospecting For and the Strip Mining of Coal, Clay, Phospate Rock, and Uranium; Providing for Permits, Reclamation Plan Requirements, Methods of Operation, and Penalties; Providing for the Termination of Reclamation Contracts Entered into Under Chapter 245, Laws of Montana, 1967; Repealing Sections 50-1018 through 50-1033, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Montana Strip Mining and Reclamation Act."

Section 2. It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for surface reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

Section 3. Unless the context requires otherwise in this act:

(1) "mineral" means coal, clay, phosphate rock, and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all

lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the mineral that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegtation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five per cent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the

slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contuor method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not contiinue or resume.

Section 4. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

Section 5. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, highwayy reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to insure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

Section 6. (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 10 of this act, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 9 and 13 of this act.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 17 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten per cent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 17 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the british thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-section accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip

mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

Section 7. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of fifty dollars ($50) and shall file

with the department a supplemental bond in the amount to be determined under section 6 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below two thousand dollars ($2,000), except as provided in subsection (5) of section 6.

Section 8. (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars ($100). This fee shall be used as a credit toward the strip mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining reclamation and revegetation bonds under this act.

(5) In the event that the holder of a prospecting permit desires to strip mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining operators under this act.

Section 9. (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipi-

tate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting or strip mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting or strip mining permit application before it can be approved.

Section 10. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 11, 12 and 13 of this act. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A land owner, operator, or any person aggrieved by the decision of the department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, highwall reduction, topsoiling and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff water so as to reduce soil ersoion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, surface damage to adjacent lands and water pollution. ensure public safety, and for other purposes.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6.

Section 11. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond

the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addiiton to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars ($200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the

plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 6 (2) (k).

Section 12. After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

Section 13. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

Section 14. (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

(c) the date of planting or seeding;

(d) the area of land planted;

(e) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 of this act.

Section 15. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

Section 16. Within sixty (60) days after each date of expiration of a permit, the operator shall annually file with the department a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by him, and any other information required by the rules of the department and the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by results of the operation.

Section 17. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

Section 18. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation of the area of land affected by the former operator.

Section 19. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

Section 20. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

Section 21. The board may reclaim, in keeping with the

provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the strip mining and reclamation fund for such purposes.

Section 22. A resident of this state, with konwledge that a requirement of this act or rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

Section 23. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for the violation, and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000). Each day on which a violation occurs constitutes a separate offense.

Section 24. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

Section 25. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed.

Section 27. Every operator shall within ninety (90) days after the effective date of this act file with the department an application for a permit.

Section 28. Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act.

Section 29. This act is effective on its passage and approval.

Approved: March 16, 1973.